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AMERICAN TARIFF
CONTROVERSIES IN THE
NINETEENTH CENTURY

EDWARD STANWOOD

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By Edward Stanwood

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**AMERICAN TARIFF CONTROVERSIES
IN THE NINETEENTH CENTURY**

AMERICAN
TARIFF CONTROVERSIES
IN THE
NINETEENTH CENTURY

BY
EDWARD STANWOOD
LITT. D. (BOWDOIN)

IN TWO VOLUMES
VOLUME I



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**AMERICAN TARIFF CONTROVERSIES
IN THE NINETEENTH CENTURY**

AMERICAN TARIFF CONTROVERSIES IN THE NINETEENTH CENTURY

I

INTRODUCTORY

THE tariff has been the most persistent issue in American politics. The refusal of one or two States to grant to Congress the power to levy an impost of five per cent. was a prominent cause of the breakdown of the Confederation, and a strongly contributing, if not the controlling, cause of the formation and adoption of the Constitution. The presidential election of 1892 turned mainly on the tariff. Between these two events, separated by more than a century in point of time, occurred many momentous national political contests upon the ever-recurring question, at the polls, on the stump, in Congress, in newspapers and pamphlets. There have been periods, some of them many years in duration, when the issue was dormant. During the long struggle over slavery the great moral question — as it was regarded at the North, the question of political life and death, as the people of the South viewed it—quite overshadowed the tariff. Yet even then the temporary settlement of the question was a mark of the ascendancy of the South in the councils of the nation. Again, under the stress of war, the forces of Protection and Free Trade observed a protracted armistice in their warfare and joined in fighting the battles of the country.

Moreover, at certain times when the financial situation of the government suggested the unwisdom of disturbing the then existing system of tariff taxation, and at other times when such phases of the financial question as the Bank of the United States, the greenback currency, or the free coinage of silver, presented themselves for decision, there have been lulls in the conflict. Nevertheless, when those more exciting transitory political problems had been disposed of, or in the intermissions of other contests, whenever the revenue was either deficient or abnormally abundant, above all, when the industrial condition of the country was unsatisfactory, the old issue came again to the front and the war of schedules was resumed with ardor.

It is easy to understand why the tariff has occupied a more prominent position in the political controversies of the United States, and has occupied it for a longer period, than has been the case in any other country. The result is due primarily to the form of the government as a federal republic with limited powers. Other governments with whose experience we can compare our own have full control over taxation in all its forms. This government has not such power. The Constitution confers upon Congress the exclusive right to levy duties on imports, and withholds from it all power to raise revenue by direct taxation, save according to a rule which the conditions of modern society render inequitable. All direct taxes must be assessed upon the basis of population. The right to levy a direct tax has been exercised but three times in the history of the government. In every case it resulted in partial or complete failure. Undoubtedly Congress will never again avail itself of the grant of power to obtain revenue by such a tax. All the taxes of that class have been surrendered to the use of the States, which can levy them upon a just and scientific basis, and which, moreover, are able to collect them.

Until, then, some new principle of taxation be discovered, the national government must look to imposts and excises as the chief sources of revenue. It happens that the excise system was from the beginning distasteful to the American people, not less so to those who favored low tariff duties than to the advocates of protection. Congress has until a recent period, under administrations by every party, chosen to reduce an excessive surplus by remitting internal taxes rather than by reducing tariff rates. The preference for an impost on foreign goods as the great source of national revenue is shown by the fact that prior to the civil war more than a billion and a half dollars came to the Treasury from the custom houses, whereas in the same period of seventy years the amount received from excise was less than twenty-two and a half millions. The total receipts from this source in the forty-two years ended in 1862 were less than half a million dollars, belated collections under laws that had been repealed. It is true that since the necessities of the civil war caused a resort to this method of taxation on an enormous scale, the people have been more tolerant of the system than they were formerly. Yet even now they dislike it except so far as it is applied to alcoholic products and tobacco.

For these reasons the problem of obtaining revenue has never involved a search for an ideal system of taxation, which, having been discovered, the government was free to adopt. The main question has always been and still is one of the particular adjustment of duties on imported goods — what classes of goods shall bear the burden and what rates shall be fixed ; and since the range of choice is wide, the answer to the question always requires a prior determination of the principle or system upon which the adjustment shall be made : whether revenue shall be the sole object in view, or the controlling but not the only object, or, if any other purpose than revenue be admissi-

ble, to what extent it may influence the preparation of a tariff law.

The circumstances of the growth and development of the country have made this an ideal political issue. If we enlarge our horizon and study the situation of other countries in which the issue of protection or free trade has arisen, we find that where conditions resembling those that have prevailed in the United States have been absent, the tariff has never been the basis of prolonged party warfare. In Great Britain, where the battle was most fierce, a single brief contest was decisive. The country passed within a few years from the state of the most tariff-protected community to one of almost absolute free trade. One statesman, compelled by the course of events to reverse his opinion, carried his party over with him; it would, perhaps, be more correct to say that he created a party for the express purpose of effecting a change so clearly demanded by the industrial situation that its opponents have been ever since in a hopeless minority. France, under the arbitrary will of an emperor, adopted a régime differing not greatly from free trade. But under the self-governing republic the nation has reverted to protection. The question of tariff has at no time been in a true sense an issue in French politics. Hardly had the German Empire been firmly established when Prince Bismarck introduced the protective system. Although the tariff is still a political question in Germany, the controversy is not between protection and free trade, but between moderate protection and the extreme form insisted upon by the agrarian party.

On the other hand, two of the dependencies of Great Britain have found themselves in situations that may reasonably be compared with that of this country, and have had an experience similar to our own. Under the Confederation each of the thirteen States applied against all the others the tariff laws governing the importation

of goods from beyond the sea. Some of them attempted protection, others threw their ports wide open. When they united under the Constitution, they adopted free trade for interstate traffic, protection as against the rest of the world. This is almost word for word the history of the tariff policies of Canada and Australia. In the provinces that originally constituted the Dominion, low duties prevailed, and the same rates were in force between Halifax and Quebec as between either of those ports and Liverpool. But it was not long after confederation when the policy of protection was adopted by Sir John Macdonald. Although the Liberal party has not ventured to overthrow the system, the tariff issue in a real sense still divides the two parties. In Australia, too, the formation of the Commonwealth, including free-trade New South Wales and protectionist Victoria, was followed at the first general election by a contest between the two systems, from which protection came forth victorious.

Writers upon the tariff history of this country seem not to have apprehended at its true importance the growth and development of the protective idea. It has sometimes been used as a reproach against protectionists that they have repeatedly changed their ground, that they have dropped the motive at one time assigned by them for advocating their system and have placed their reliance upon arguments wholly new.¹ The charge itself is true, but the change of motive merely marks the accomplishment of one object and progress toward a new and grander purpose. In its inception the idea was merely the principle that this country must encourage and secure the production within itself of all things indispensable in time of war, — the aim of a weak nation which had just succeeded in its struggle for independence. In this form it appealed to all the people ; and so did the motive developed in Hamilton's

¹ The retort *tu quoque* is not a good reply to the accusation, but it truthfully might be made.

great "Report on Manufactures," that it was desirable to open new outlets for industry in order to supplement agriculture. When the early tariff laws, designed as they professedly were to protect our "infant industries," failed to furnish adequate defence against foreign commercial domination, when Great Britain was able to boast that, if it had lost the American colonies, it had almost complete possession of their trade, a new argument for protection was furnished. Political independence had been achieved; it must be perfected by adding to it commercial and industrial independence. No patriot could oppose the aspiration, however strenuously he might contend against the means chosen to accomplish the end. The legislative measures to secure such independence were enacted under the leadership of the statesmen who had promoted and conducted the war of 1812, by Henry Clay and John C. Calhoun, by the West and South, the regions least interested in manufactures. The commercial interests of the East were arrayed against them. But New England and Pennsylvania derived the greatest benefit from those measures, the success of which in promoting new industries aroused in the North an ambition to make this a manufacturing country in the true sense, as distinguished from a country which merely manufactured enough to satisfy its most pressing and universal wants. Before this time patriotism had seemed to demand the acquiescence of all the people in measures to emancipate the country from every form of foreign control, and there had been no suggestion that the use of the tariff to promote manufactures was unconstitutional. Southern opposition to a policy that would increase the numerical and consequently the political preponderance of the North led to the introduction of the constitutional argument against the protective system, which now began to add to its phrases "diversified industries," "the home market," and "the American system," each of which indicates a new aim of the protectionist policy. Industries were

multiplied and magnified, the number of the employed increased, and the labor question arose. Then it became expedient to continue, extend, and complete the system in order to maintain the relatively high rate of wages which has always prevailed in this country; and the best of all arguments was thus furnished to those who, not being themselves interested personally in manufactures, adhered to the cause of protection.

All of the objects here mentioned, as having been successively the aim of protectionists, have been splendidly achieved. By protective tariffs? To that question there may be two answers, given by men of equal intelligence, knowledge of history, and patriotism. Readers of the following pages will have no difficulty in discovering that the author believes that tariffs have had a powerful agency in promoting the development, the wealth, and the strength of this great republic. Nevertheless he has endeavored to present the facts so fully and fairly as to give those who take a different view all the materials that history affords for disputing that position.

In the most recent times a new and grand ambition has taken possession of the American people,—which is no less than a desire to enter and possess the markets of the world. This ambition is cherished both by the advocates of a low tariff and by those who believe in the merits of the system under which, if not by means of which, the country has grown so great. The difference between them was that the one party held that the nation could not enter foreign markets as a conqueror if it were selfishly to insist upon the absolute control of its own market; the other party maintained that the most efficient preparation for a campaign abroad was an impregnable defence at home. Whether the one party or the other was theoretically right, the fact remains that under the operation of the most closely protective tariff ever enacted by Congress, the United States has held that home market which is univer-

sally recognized as the best in the world, and has spread consternation among all its commercial and industrial rivals by an "American invasion" which is as yet a feint and reconnaissance only, but which is destined to become a great reality.

That, however, is the word of the prophet and not of the historian. The changes that have been wrought in the industrial life of the United States are so vast and so startling as to tempt one who has possessed himself of the facts of the past and of the conditions of the present to peer into the future and predict what is to happen next. Is the country ultimately, is it speedily, to find itself where England was when the logic of events made every Englishman a free-trader? It would be rash to answer the question by a "yes" or a "no." It would be rash for a statesman to urge the abandonment of a policy in the pursuit of which the country has forged its way to the head of manufacturing nations, at the same time that its wealth, the rewards it gives to labor, and the comforts enjoyed by all classes of the people make it the envy of every other nation. For the present we must act as though the reasons for maintaining the protective system were to continue operative indefinitely. Should the time come when it may be abandoned, the very magnitude of this market and the enormous demands of a population now approaching one hundred million will act as a bulwark against the dangers of too active foreign competition.

The materials for a history of the tariff are abundant, even superabundant. The statistics of commerce and industry, whole libraries of academic argument, tens of thousands of pages of the publications in which the debates of Congress have been recorded, stump speeches and newspaper leaders innumerable, all these are at hand, and they should be digested by any one who undertakes the task. Immense as is the preliminary labor involved, it does not, unfortunately, bring to the historian infallible

judgment as to what shall be included in and what shall be omitted from his written work. The character of the controversy which he is to describe has been in the main political, for long periods almost exclusively so, — not commercial, not economical, not fiscal, but for the most part a game of party politics. Since it was not the whole game it is necessary to set forth the manner and extent of its influence upon other party issues and of their reflex influence upon it. Here arises a danger, on the one hand, of touching upon the extraneous matters so lightly as to belittle their importance, on the other hand of going so far as to make the work discursive and obscure. Again, although the springs of action were so largely political, the tariff laws themselves in their operation affected profoundly the commerce, the industry, and the social condition of the people. The selection of facts pertinent to the subject and the rejection of those too remote to be considered as potential are matters regarding which no two persons would agree. It will doubtless seem strange to any political economist who may examine the following pages that he can find therein no critical analysis of the writings of Henry C. Carey, of Friedrich List, of David A. Wells, of Horace Greeley, and of other voluminous American writers on the theories of free trade and protection; that no intimation appears that those writers exerted a perceptible influence upon the course of events; that the omission of references to them even suggests that the author is not acquainted with their works. One may search in vain herein for any discussion of the theory of wages, of the wisdom of buying in the cheapest market, and of other philosophical ideas upon which men have based their conclusions as to the economic effects of tariffs. The simple truth is that this is in no sense a treatise on political economy.

Other critics may wonder that the history of industries affected by the tariff is given so briefly that it might as

well not have been given at all; and it may be urged, without eliciting from the author a contradiction of the statement, that without the help of analytical histories of the prosperity or adversity of this and that industry under various tariffs an important part of the lesson to be learned from a study of those tariffs is lost. Others still may think that too great or too little stress is laid upon one political movement or another that affected the course of tariff legislation. All, perhaps, will be of opinion that the author's personal views are obtruded too often and advanced too positively.

Against such criticisms no defence is offered. The work is confessedly that of one who believes that the system of protection has given an opportunity which the opposing system would not have afforded for the unexampled growth of the country, and who has not advanced this doctrine with more confidence or with more persistency than writers of another school have expressed their abhorrence for protection. Unless one undertakes the production of a colossal, and therefore an unreadable, work on this subject, a great amount of material must be left unused. The work of selection and rejection in dealing with available matter must be performed according to the author's deliberate judgment as to what does and what does not assist to an important degree in explaining the course of events. However greatly the author may have failed in the exercise of good judgment in this respect, he is not conscious that his choice of material has been affected by personal bias, nor that any facts essential to the formation of an opinion contrary to his own have been suppressed.

II

BEFORE AND AFTER INDEPENDENCE

THE policy of Great Britain toward its American colonies impressed strongly upon the understanding of our forefathers the usefulness of restrictive laws as a means of controlling trade with foreign countries, and of encouraging home industry. It is unnecessary to inquire how much of truth and how much of error made up the system of political economy commonly accepted, and acted upon by England during the period of our colonial dependence. The facts which exerted a decisive influence upon the young nation, brought into commercial conflict with the mother country after its political independence had been achieved, were that the means adopted by Great Britain had accomplished the end in view, and that the occasion demanded the use of some means to avert a condition of commercial vassalage.

The intellectual leaders of the Revolution had seen the injury to the colonies that resulted from the application to them of the principles of the mercantile system. Emancipated from the ideas and traditions of Old World polity, they were ready to adopt the views which will ever be associated with the name of Adam Smith, whose "Wealth of Nations" was published in the year of the Declaration of Independence. Having fought their fight against a whole system of repression and restriction, they dreamed of free trade throughout the world. They would set the example of leaving commerce unfettered. They believed that the trade of America was so important to other countries that they in their turn would, willingly or

perforce, abolish the old-time restrictions. Their dream was brief, their awakening painful. They found that they could expect no reciprocity. Not only did their concessions secure them no privileges in return, but their propositions of free trade were treated as tokens of political weakness, and they were taunted with having a government wholly without power to carry into effect any commercial stipulation. When it was discovered that this was in truth the situation, the leaders of political thought and action in the young republic reluctantly but openly and frankly abandoned their position in favor of unrestricted commerce and advised an unrelenting use of the weapon which they had hoped to discard, the power of which they had observed and felt.

A protective tariff, using that phrase in its modern sense, was not one of the measures by which Great Britain took to itself the chief advantage in all dealings with its American colonies. It was not necessary to resort to that expedient. Navigation laws, prohibition of certain kinds of trade and certain industries, answered every purpose. The first important restriction upon American commerce was imposed by Cromwell's Navigation Act of 1651, which was aimed primarily not at America but at Holland. All the laws passed during the period of the Commonwealth were treated by the monarchical party as invalid. Consequently Cromwell's act, reënacted after the Restoration, with some additions, is commonly known as the act of 1660, and of the reign of Charles II. The importation of any goods whatsoever into and their exportation from Great Britain and its colonies were made illegal, save in vessels owned, commanded, and manned by Englishmen. Colonial ships were allowed to take part in the direct trade between the British Isles and the colony in which they were owned. Indirect importation into England was forbidden. Goods were required to come direct from the place where they were produced. For

example: New England vessels might trade with the West Indies; but they might not carry West Indian sugar to England either directly or by way of another colony. The law also forbade the carrying of any sugar, tobacco, cotton, wool, and certain other articles grown in the colonies, elsewhere than to England or to another colony of Great Britain. An act passed two years later required that all European merchandise intended for the colonies should be first shipped to England and transported thence to its destination in English-built vessels. In other words, direct importation into the colonies from a European country was prohibited.

Early in the next century the policy was adopted of forbidding the establishment of manufactures in the colonies. The intention of Parliament was expressed in an act passed in 1719 declaring it unlawful to set up in any colony furnaces for the production of cast-iron or for the manufacture of iron, because "the establishment of manufactories in the colonies tends to make them more independent of Great Britain."

It is not necessary to enumerate the several acts, regulations, and orders in pursuance of the policy here outlined. It is sufficient to say that as new occasions arose, or as the enterprise of the colonists manifested itself in new directions, the laws became more strict, the limitations upon colonial activities became more numerous, and the execution of all restrictive regulations increased in severity.¹ Coincidentally with the operation of the laws, Eng-

¹ Among the watchful eyes seeking means to use the colonies — or "plantations" as they were then called — to enrich England, none had a wider scope of observation than those of Joshua Gee, whose small but comprehensive work, "The Trade and Navigation of Great Britain Considered," first published in 1729, was regarded as of so much importance that an edition enlarged with recent notes was printed as late as 1767. Mr. Gee reviewed the condition of the American colonies and remarked upon their poverty, a fact which did not draw from him any expressions of pity. Indeed he pointed out ways in which the little which the colonists had might be extorted by England. He remarked of "the in-

land's commerce and her domination of the seas increased, and the trade of her rivals declined; and British manufactures developed more rapidly and more extensively than those of any other nation. It is contended by those who hold that restraints upon trade are always and everywhere injurious, that the growth of the commerce and manufactures of Great Britain was inevitable and not a result of its economic policy. The question is one not to be discussed here. Nevertheless, the colonists of the eighteenth century may be excused if, rightly or wrongly, they applied the argument *post hoc, ergo propter hoc*; if they attributed the great progress which English manufactures made during that century to the strong measures taken to compel commerce to flow in its natural channels, and if, when they desired to accomplish similar results, they had recourse to similar expedients.

Until shortly before the Declaration of Independence Americans did not strongly object to the laws restraining and limiting their industries. In general they conceded the right of the mother country to protect its own commerce and manufactures, even at their expense. Some of them evaded the navigation laws successfully and profitably. Where the evasion did not seriously affect the interests of London merchants it seems to have been tolerated without reproof or repression. As for manufactures, it would have been impossible to suppress the household industry in any form, and it was never attempted. For the rest, few of the colonists cared to engage in the production

habitants of our plantations" that "not one fourth part of their product redounds to their own profit; for out of all that comes here they only carry back clothing and other accommodations for their families, all of which is of the manufacture and merchandise of this kingdom." (Edition of 1767, p. 170.) He urged "that our own interest be not mistaken for that of the planters; for every restraint and difficulty put upon our trade with them makes them have recourse to their own products which they manufacture; a thing of great consequence to us, and ought to be guarded against." (Ibid. p. 173.)

of goods for a general market or for export, and the restrictions upon that occupation worked no great hardship. As the alienation between England and her colonies grew, the previously unfelt restraints became "manacles" and the prohibitions became more irksome. Whenever events portended an armed conflict with England, the effect of the restrictive laws impressed itself more and more upon the leaders of political thought, and under their advice the legislatures hastened to adopt measures to encourage the manufacture of articles needful in war. Nevertheless, the change of public opinion regarding the restraints laid upon the colonies by the mother country was undoubtedly not due wholly to political causes. The colonial communities were more self-sufficient than they had previously been. The bands upon their infant limbs chafed when they hindered healthful growth and interfered with free movement. Therefore, when the Declaration was made which dissolved the connection of the colonies with Great Britain, it was already a real and not a fancied grievance which was cited with others in the indictment against King George in these words: "for cutting off our trade with all parts of the world."

It has been remarked already that a burdensome impost upon colonial produce was not one of the measures adopted by Great Britain to protect itself against competition by its dependencies. A simple prohibition upon production, or upon exportation, was more efficacious. But it was the weapon of self-defence with the use of which the colonists were most familiar. Most of the provinces were accustomed to derive a revenue from duties on imported goods.¹ They were permitted by their charters to exercise this

¹ For a full account of the tariff legislation of the colonies see "The First Stages of the Tariff Policy of the United States," by William Hill, A. M., Publications of the American Economic Association, vol. viii. no. 6, an invaluable record for the student, from which many of the facts in the next few pages of this book have been drawn.

power. It is needless to say that so long as they were subject to Great Britain the duties were laid for purposes of revenue only, since any other use of the privilege would have been an open defiance of the repressive policy of the home government. The Revolutionary war caused such an interruption of trade that imposts were abandoned by all the States. Indeed, commerce with Great Britain was forbidden under heavy penalties; and the presence of British warships and privateers along the coast rendered trade with other countries practically impossible. The situation at the close of the war and the changes that took place between the treaty of peace and the adoption of the Constitution, both in the conditions of trade upon the ocean and in the opinions of those who best represented the thought of the young nation, furnish a key to the whole subsequent history of the country in respect of its tariff policy. For the revulsion in popular sentiment and in the opinions of the political leaders made possible the passage of the first national tariff law; and that act has impressed its character, to a certain extent at least, upon all our subsequent tariff legislation.

It is agreed by all students of the development of opinion on this subject, that at the close of the war opposition to the restrictive system, adopted by England toward its colonies and toward other countries, was universal. The opposition was both sentimental and practical in its origin. Free trade in the broadest sense naturally associated itself in the minds of Americans with the political freedom they had won, — freedom from monarchical institutions, freedom from aristocracy and class rule, freedom from foreign dictation, freedom even from centralized government in the nation they had formed. The free trade they believed in meant the widest liberty of all men to engage in any commerce that seemed to promise profit, the abolition of all restrictions upon the movements of ships and cargoes wherever built, wherever owned, by whomsoever com-

manded and manned; the sweeping away of all prohibitions upon the admission of the products of the world; the abandonment of tariffs that might hamper or impede the free movement of merchandise.¹ It may be said that the sentiments of our forefathers upon the whole subject of restrictive legislation were not unlike those which, eighty years afterward, impelled the framers of the Constitution of the Confederate States to adopt a provision forbidding the imposition of customs duties for purposes of protection. Had the Constitution of the United States been drawn in 1782, it is not unlikely that it would have contained a prohibition of all laws in restraint of trade, foreign or domestic.

Sentiment in this case was none the less sincere because it was backed by self-interest. The new nation had everything to gain and nothing to lose by universal free trade. The occupations of the people were agricultural and commercial. To raise and sell freely the products of their farms and plantations and fisheries, and to engage unrestrainedly in the general commerce of the world, were the limits of their industrial ambition. They had industries of no sort that required protection against foreign competition. The mechanic arts were represented only by the village carpenters, painters, blacksmiths, shoemakers, and other artisans who ministered to local wants. No manu-

¹ "The States as dependencies had been so severely and so wantonly cramped by British navigation acts, and for more than a century had so steadily resisted them, that the desire of absolute freedom of commerce had become a part of their nature." (Bancroft, *History*, vol. i. p. 64.) "Almost insensibly, but firmly, the new ground was taken until as the struggle went on in the conflict of arms the smaller question seemed swallowed up in the larger one of the vindication of the principles of free commerce." (O. L. Elliott, "The Tariff Controversy," *Leland Stanford Junior University Monographs*, No. 1, p. 33.) "These reasons, then, — disturbed conditions of trade and government, hatred of restrictions to which they had been subjected, and ideas favoring freedom and liberty, — account for the absence of impost laws from 1776 to 1781." (Hill, "First Stages of the Tariff Policy," p. 40.)

factures worthy of the name existed in any part of their country, although most of the prime necessities of life were of domestic origin, usually the product of household industry. It was as much an essential of free trade as they understood it that they should be permitted to buy all needed articles of foreign manufacture, without restraint, as it was that they should occupy the markets of the world with their own merchandise. An opinion even prevailed that the conditions at home forbade the establishment of manufactures. Many of the statesmen of that day, and for a long time afterward, as we shall see presently, went further, and regarded the possibility of manufacturing on a large scale as evidence of a degradation of society and of labor in communities capable of engaging in that occupation. Tillage of the soil was deemed more honorable and more conducive to the prevalence of social virtues than manufacturing. On the other hand the shipping of the States could hold its own on even terms with that of any other country.

Theory reinforced sentiment and self-interest. Abundant evidence exists that the principles of Adam Smith had made a far deeper impression upon the minds of the leading men in the United States than upon those of the ruling class in England. Numerous passages in the writings of Franklin, Adams, Jefferson, Madison, and others, show that those statesmen were familiar with the writings of the great English economist, that they had adopted his theories, and rejected the principles of mercantilism.¹

Internal and external causes operated quickly and strongly to change the attitude of all these men, as practical statesmen, and the policy of the States. The disorganization consequent upon the long war and the heavy

¹ See the citations of the opinions of these statesmen in the monographs of Hill and Elliott; also in "Taxation in the United States, 1789-1816," by Henry Carter Adams, Ph. D., Johns Hopkins University Series, vol. ii. no. 5.

debts incurred in prosecuting it, compelled a recurrence to the impost as the most available source of revenue. At first the articles taxed were few, — luxuries for the most part, — and the rates were low. Various causes combined to induce a change of policy. In the first place, the resumption of relations with the world was accompanied by a lavish expenditure for foreign articles. To a certain extent the enormous expansion of importation immediately after the restoration of peace was not only natural but legitimate. The taste for European goods had been merely suppressed, not lost. Supply had been cut off so long that there was a real deficiency of articles which the home market did not furnish; and an importation much beyond the average was required to replenish stocks. Meanwhile, however, the stores of British manufactured goods, long held back by the restrictions upon commerce resulting from war, poured into the American market, where they found a ready sale. The merchandise thus released comprised not only necessary things, but those which it was the fashion of the time to designate as “gew-gaws.” The money sent over by France for the support of its auxiliary forces, that expended in America by the British armies, and that which had been gained during the war by illicit trade, was all in the country when peace was restored, for there had been no outlet for it. Thus it happened that the States, although seemingly drained of their resources by the conflict, were really possessed of a more abundant supply of coined money than they had ever had in colonial times. It furnished the people with the means of indulgence in foreign luxuries, and the ability to pay cash made them desirable customers. But their excessive expenditures led to an extensive exportation of specie, and a period of hard times ensued. No doubt the evil would have cured itself without legislative interference. To the statesmen of the time it seemed that freedom of commerce led to luxury, luxury to the loss of specie, and

loss of specie to hard times. The obvious remedy was to tax the luxuries in order to discourage extravagance and retain the hard money.

State jealousy also played an important part in bringing about a change of policy. It would require a more careful and detailed setting forth of early State tariffs than is expedient in this place to illustrate the operation of this agency. The situation of New York, between Connecticut and New Jersey, will be a sufficient example. The growing commerce of the port of New York, and the opportunity of that city to supply the country in all directions with imported goods, rendered a light impost by the legislature of New York an easy revenue resource. But Connecticut and New Jersey wished to reserve their own trade to themselves. Connecticut endeavored to retain or recover it by a tariff which was aimed as directly at the products of New York as at foreign goods imported by way of New York. New Jersey adopted the opposite remedy. It threw its ports open to commerce and levied no duties upon merchandise arriving from any part of the world. The mutual jealousies of the States thus rendered the whole commercial situation intolerable, but incidentally they called universal attention to the power that resided in restrictive and retaliatory tariff laws as a weapon of offence and defence.

Again, the necessities of war and the exclusion of the States from the markets of the world had introduced manufactures, although not upon a large scale, and had turned the attention of enterprising men in some of the more settled communities to that branch of industry. When the danger arose of a complete extinction of the establishments already in existence, and of a virtual prohibition upon the introduction of other manufacturing trades, — the flood of British goods was a menace both to infant and embryo manufactures, — there was a demand for protection in the sense in which the word is now used.

There was a political reason, presently to be mentioned, for the readiness, almost eagerness of the response to this demand. Nevertheless there is no reason to think that the State legislatures would have been less willing to comply with the request for protective duties for manufactures if the political reason had been wanting. All the States were anxious to promote every enterprise that bade fair to increase wealth and prosperity. Hampered by no constitutional restraints whatever, they were equally ready to exempt from the poll tax all workmen employed in woollen mills, to offer bounty on every pound of flax and hemp raised in the State, to employ an inventor to devise spinning machinery, which should be afterward deposited in a public place where the model might be copied by any one wishing to engage in cotton manufacturing. All the above-mentioned measures were adopted by one or more of the States. The legislatures were not more friendly to manufactures than to agriculture, to commerce, or to fisheries. They favored all industries. They promoted them in a variety of ways. The fact that one only of all those ways was designedly repressive of foreign competition, as well as promotive of home industry, is a sufficient answer to the thesis that the change of policy observable in the tariffs of the American States between 1782 and 1787 was due wholly to the alarming situation that developed in the relations between the new nation and the mother country after the treaty of peace.

Beside all the influences here noted was one other, which undoubtedly was more potent than any other in changing the opinions and the conduct of the great leaders in American politics. Those previously mentioned appealed to neighborhood great men, to State statesmen, to tradesmen, to the common people. This affected the judgment of the broader-minded and more experienced politicians whose care and thought extended to subjects beyond the petty interests of a single State. They dis-

covered to their dismay that although the thirteen colonies had achieved political independence, they had not established a government that inspired respect abroad. Congress could neither raise money to pay the national debt — not even enough to meet the interest — nor make with a foreign power an agreement which it had the strength to carry out. Great Britain was deriving all the benefits of trade with the States that could have been obtained by the most arbitrary and ruthless exercise of sovereign power that would have been possible had the Revolution never taken place; and at the same time was successfully excluding the States from a share in the general ocean trade of the world.

An earnest effort was made to negotiate commercial treaties on fair terms with Great Britain and the European countries. It resulted in failure. There was nothing which the United States could offer in exchange for the concessions desired. It is perhaps more accurate to say that nothing could be offered effectively. For although Congress could make treaties it could not enforce them. It might and did recommend to the States to pass laws carrying treaties into effect, but the States acted their own pleasure in the matter of conforming to the advice; and it would have been idle to expect all of them to comply in any given case. Consequently the cabinets of Europe were wise in declining to make bargains which the party of the other part could not keep. The more or less polite indifference with which the American overtures were received led to intimations by John Adams, then acting as minister charged with the negotiation of commercial treaties, that the United States would retaliate with restrictive legislation of its own. He could not make the statesmen and merchants of England believe that the threat would be carried into execution; nor could he persuade them that any laws which might be passed would be more than idle and ineffective declarations of purpose.

They had substantial reasons for incredulity. Congress made several attempts to obtain from the States the authority without which any action it might propose would be impotent. In 1781 it asked for a grant of power to levy an impost of five per cent., the proceeds to be applied to war purposes only, and the tax to cease when the public debt should be paid. Seven months after this recommendation had been made, the necessary permission had been granted by six of the States. A year more, and five others had agreed to the proposition; but Georgia and Rhode Island withheld their consent. Upon an urgent request by Congress Georgia yielded, but Rhode Island refused; and, as the agreement of all the States was necessary to an amendment of the Articles of Confederation, the proposition failed. Nearly two years had been lost in the attempt to place the finances of the government upon some other basis than the voluntary contributions of the States.

The next spring, in April, 1783, the proposition was renewed in a modified form. In order to conciliate the extreme jealousy of State rights, it was agreed that the collectors of the impost should be appointed by the State governments. In February, 1786, four States still withheld their assent to the proposition. In August three of them had yielded. New York alone refused, and it maintained its refusal to the last.

In 1784 Congress asked the States to confer upon it the power to regulate commerce with foreign countries by prohibitions and discriminations against unfriendly nations. The suggestion met with little favor.

A government which could not obtain permission to lay a collectible tax to pay its debts and its current expenses was so manifestly not one to be feared when it threatened hostile commercial legislation that the cabinets of Europe took no risk in declining to be alarmed.¹ So far as the

¹ This was the view taken by Lord Sheffield, who opposed the com-

United States was concerned, it will be seen, the situation was such that, if a means of ameliorating it were not speedily found, there was danger of a far worse condition than that from which the Revolutionary war had emancipated the States — a condition of political as well as commercial subserviency to England; all the more galling to patriots of high spirit because it would have come about in consequence of the prevalence of a petty State pride which made less account of the interests of the nation than of neighborhood interests. The situation was indeed intolerable. American merchants, forbidden to send to the British Isles their own ships laden with domestic produce, and cut off from the trade with the West Indies by a royal decree issued in 1783, saw their foreign commerce almost wholly destroyed. The denial to Congress of the right to make a general tariff prevented the adoption of a policy of national self-defence; want of unity in State action rendered it impossible by import duties to remove the temptation the people were under to purchase British "gewgaws." The only effective tariff laws were those which the several States aimed at their neighbors. The situation was further aggravated by the paper-money evil, and by the stay-laws passed for the benefit of debtors and to the ruin of creditors.

In view of all these facts, there is no difficulty in understanding the course of events in the period between the close of the Revolutionary war and the meeting of the convention which framed the Constitution. The spirit

mercantile treaty negotiated by Mr. Pitt with this country in 1783. Lord Sheffield held that the former colonists had forfeited the rights of British subjects; that a treaty would not be binding on all the States; that the young republic must of necessity remain dependent upon Great Britain for most articles of manufacture; and that the remaining colonies could furnish England with a sufficiency of most of the products of which the United States had a surplus. Mathew Carey and Tench Coxe made an effective reply to some of these contentions, but the impotency of the new government was a fact that could not be gainsaid.

which manifested itself in one form as opposition to the grant to Congress of any taxing power, appeared in another form as the policy of protection to local industries. It was not protection against British goods; but it was Pennsylvania protecting itself against New England, and Massachusetts levying duties upon all "foreign" products, including those of Rhode Island and New York. It is not proposed here to mention in detail the provisions of the State tariff laws.¹ It will be sufficient for all the purposes of this book to establish the fact that the principle of protection to domestic manufactures by means of a tariff on imported goods was not only familiar to the people before the adoption of the Constitution, but had been incorporated into the political system of the States which afterward became the champions of the policy.

The preamble of the Massachusetts revenue act of 1785 begins with these words: "Whereas it is highly necessary for the welfare and happiness of all States, and more especially such as are republican, to encourage agriculture, the improvement of raw materials, and manufactures." The act imposes higher duties than those previously laid; and the preamble shows conclusively that the chief object of the increase was the protection of home interests. In the preamble of the New Hampshire act of 1786 it is said that "the laying of duties on articles the product or manufacture of foreign countries will not only produce a considerable revenue to the State, but will tend to encourage the manufacture of many articles within the same." The title of the Rhode Island act of 1785 is: "An act for laying additional duties on certain enumerated articles for encouraging the manufacture of them within this State and the United States of America." Connecticut also had a tariff for protection, but the purpose seems not to have been avowed in the title, preamble, or text of the

¹ A full and interesting account of these laws may be found in Hill's "First Stages of the Tariff Policy," pp. 43-55.

law. But in 1788, the policy of the State was made manifest in an act which exempted woollen factories and iron works from taxation, and relieved the workmen employed in them from the payment of poll taxes, "that all due encouragement should be given to manufactures in this State." New York established a thoroughly protective system, but did not assign reasons for so doing. Pennsylvania began with low duties, but soon adopted the protective principle; and established higher rates and levied duties on a longer list of articles than did any other State. In 1785 it gave to its tariff law the title: "An act to encourage and protect the manufactures of this State by laying duties on certain manufactures which interfere with them."

We see, then, that the employment of a duty on imported goods to give protection to home industry was the policy of six of the seven northern States before the adoption of the Constitution, and the purpose was declared in the statutes of five of the States. The only exception was New Jersey, which, as has already been explained, pursued a different policy because of her geographical position and her lack of a good port of entry. Being compelled to pay tribute to her two neighbors on all the foreign goods which her people consumed, she tried the policy of absolute free trade, but apparently attracted little commerce thereby. These facts become of the utmost importance in their bearing upon discussions which arose long years afterward in regard to the protective system. It seems impossible for any one who has read the title of the Pennsylvania act, just cited, to maintain that the First Congress was not aware of the significance of the phrase, in the preamble of the tariff act of 1789, "the encouragement and protection of manufactures," or that it intended something different from the signification ordinarily given to the phrase at the present day, or that its purpose was political and not industrial. All these

contentions have been put forward at various times, and will appear in the controversies that are presently to be recorded.

Not less important than the action of the State legislatures, in shaping the events which led to the formation of the Constitution, and ultimately to the adoption of a national tariff policy, was the change which took place in the attitude of the great leaders by whom the people were brought under the new system of government. The causes of the change were different from those which found quick expression in the State tariffs; they were causes which affect the mind of the statesman, as distinguished from those which appeal to the pocket; they were political rather than material, national and not local. Adams, Jefferson, Franklin, Madison, and Henry, and other public men of the first and second ranks, showed clearly in their writings that they were theoretically convinced that a general policy of free trade was the most advantageous system, and that they were practically of opinion that it was by far the most profitable for a country in the situation of the United States. But within a year or two of the time when they had given expression to this view, they all, with the exception of Franklin, reversed their judgment and were thoroughly converted to the opinion that the United States must follow the example of other nations and answer restriction with restriction. Hamilton alone seems to have been from the first an advocate of a protective policy as a means of inducing the establishment of manufactures. He took that position while still a student at college, before the beginning of the Revolutionary war,¹ and adhered to it throughout his public career. A few citations from the expressions of American statesmen, all of which are borrowed from Hill's monograph, will illustrate the change which their sentiments underwent.

¹ See Hill's "First Stages of the Tariff Policy," p. 87.

John Adams wrote to Matthew Robinson, March 2, 1786, "The United States are willing to throw wide open every port in their dominions to British ships and merchants and merchandise, and I am ready, in their behalf, to pledge their faith in a treaty to this effect, upon the reciprocal stipulation of this nation that her ports will be equally open to our ships, merchants, and produce. But the United States must repel monopolies by monopolies and answer prohibitions by prohibitions."¹

Jefferson wrote, "The system into which the United States wished to go was that of freeing commerce from every shackle. A contrary conduct in Great Britain will occasion them to adopt a contrary system, at least as to that island."² And again, "We wish to do it [promote commerce] by throwing open all the doors of commerce and knocking off all its shackles. But as this cannot be done for others unless they will do it for us, and there is no probability that Europe will do this, I suppose we may be obliged to adopt a system which may shackle them in our ports as they do us in theirs."³ In another passage he expressed not merely the wish for free trade, but a strong conviction as to the wisdom of that system as a world policy. "I think," he wrote, "that all the world would gain by setting commerce at perfect liberty."⁴

Madison had more to do with the actual beginning of tariff legislation in the United States than all the others here quoted, combined. It will throw a certain light upon the meaning of the preamble of the first tariff act, already referred to, to quote a passage from a letter written by Madison to Edmund Pendleton, shortly before the constitutional convention met: "There is a rage at present for high duties, partly for the purpose of revenue, partly

¹ John Adams's Works, vol. viii. p. 382.

² Jefferson's Works, vol. i. p. 479.

³ *Ibid.* p. 465.

⁴ *Ibid.* p. 371.

for forcing manufactures, which it is difficult to resist.”¹ The sentence shows clearly his opinion upon the abstract question of protection. But he had already taken a position which he did not abandon during his long public life, and which is to be found set forth in his speeches in Congress, in his messages during his presidential term, and in the famous Cabell letters — which were written more than forty years later. It was probably developed for the first time in a letter written to Jefferson, August 7, 1788, “Much indeed is it to be wished, as I conceive, that no regulations of trade, that is to say, no restrictions on imports whatever, were necessary. A perfect freedom is the system which would be my choice. But before such a system will be eligible, perhaps, for the United States, they must be out of debt; before it will be attainable, all other nations must concur in it.”²

The movement which resulted in the formation of the present “more perfect union” of the States had its origin directly in the public evils set forth in the preceding pages. It is undoubtedly true that other evils — such, for example, as those which were exposed by the rebellion of Daniel Shays — reinforced the movement; and few students of history will maintain confidently that the undertaking would have been successful had not the lawlessness and disorder of the period compelled men to recognize the inherent weakness of the decentralized government established by the Articles of Confederation. Nevertheless it is a truthful statement that the financial condition of the United States, and the inability to make favorable terms of trade with foreign nations, were the prime motives of the effort to establish a stronger government. The Annapolis Convention, which met in September, 1786, was called by the legislature of Virginia. The reasons for summoning it are given by Mr. Madison in his “Introduction to the Debates in the Constitutional

¹ Madison's Works, vol. i. p. 271.

² *Ibid.* p. 170.

Convention of 1787.”¹ The outcome of the Annapolis meeting was a recommendation of a general convention of all the States for the purpose of extending greatly the powers of Congress.

So obvious was the necessity that the general government should possess the power to levy imposts at its own discretion, and that it should also have authority to regulate trade with foreign countries and among the several States, that the clauses of the Constitution conferring these rights upon the Congress were adopted almost without debate. The framework upon which the Constitution was built consisted of a series of resolutions presented to the convention on May 29, 1787, by Edmund Randolph, of Virginia, and a rough draft of a Constitution offered on the same day by Charles Pinckney, of South Carolina. Mr. Randolph's seventh resolution related to the powers of the legislature; it was general in its nature and specified but one class of cases in which the authority

¹ The failure of the varied propositions in the legislature for enlarging the powers of Congress to obtain from them [the States] the means of providing for the debts of the Revolution, and of countervailing the commercial laws of Great Britain, a source of much irritation, and against which the separate efforts of the States were found worse than abortive; these considerations, with the lights thrown on the whole subject by the free and full discussion it had undergone, led to a general acquiescence in the resolution passed on the twenty-first day of January, 1786, which proposed and invited a meeting of deputies from all the States, as follows: —

“*Resolved*, That Edmund Randolph, James Madison, Jr., Walter Jones, St. George Tucker, and Meriwether Smith, Esquires, be appointed commissioners who, or any three of whom, shall meet such commissioners as may be appointed in the other States of the Union, at a time and place to be agreed on, to take into consideration the trade of the United States; to examine the relative situation and trade of said States; to consider how far a uniform system in their commercial regulations may be necessary to their common interest and their permanent harmony; and to report to the several States such an act, relative to this great object, as, when unanimously ratified by them, will enable the United States in Congress effectually to provide for the same.” — “Introduction to the Debates,” p. 35. [Edition of E. H. Scott, Chicago, 1893.]

of Congress was to be supreme, namely, in acting as an arbitrator between the States. Mr. Pinckney's sixth resolution began as follows: —

The Legislature of the United States shall have the power to lay and collect taxes, duties, imposts and excises;

To regulate commerce with all nations and among the several States.

After the resolutions of Mr. Randolph had been considered and adopted provisionally, they were referred, on the 26th of July, to a Committee of Detail, consisting of five members. Mr. Pinckney's plan was referred to the same committee, which, on August 6, reported a draft of a Constitution, containing the two clauses above quoted, without the change of a word. Article seven, in which the clauses were placed, came up for discussion on the 16th of August. A question was put as to the reasons for using the words "imposts" and "duties," which seemed to the inquirer synonymous. The reply was made that imposts referred to commerce, but that duties "extend to a variety of objects, as stamp duties, etc." Daniel Carroll, of Maryland, doubted the expediency of allowing a majority to constitute a quorum in matters of taxation, considering the diversity of interests among the States; but he made no motion. The importance of adding a phrase forbidding duties on exports was briefly discussed; but the subject was postponed because the prohibition was contained in another section of the same article. The clauses quoted were then adopted by a unanimous vote. It will be observed that they are both expressed in the most unreserved terms. There is no limitation upon the power of taxation, and no restriction as to the objects for which imposts might be laid. If then the Constitution contains limitations and restrictions in these grants of power, we must seek for them in the history of the subsequent revision of the clauses.

On the 18th of August two series of proposed addi-

tions to the enumerated powers of Congress were introduced, the one series by Mr. Madison, the other by Mr. Pinckney, to be referred, as the movers requested, to the Committee of Detail. Among the suggestions of Mr. Pinckney were these : —

To secure the payment of the public debt ;

To secure all creditors under the new Constitution from a violation of the public faith when pledged by the authority of the legislature.

There were certain other propositions, not relating to the power of taxation, which, in after times, furnished the bases of arguments against the constitutionality of a tariff for protection. These will be examined in the discussion of that question.¹ No proposition was made to diminish the grant of the taxing power. On the 22d of August the Committee of Detail reported a recommendation that at the end of the first clause quoted above the following words should be added : —

for payment of the debts and necessary expenses of the United States ; provided, that no law of raising any branch of revenue, except what may be specially appropriated for the payment of interest on debts or loans, shall continue in force for more than — years ;

— and at the end of the second clause : —

and with Indians, within the limits of any State, not subject to the laws thereof.

An apprehension was felt that attempts would be made to evade, or at least to scale, the public debt. A clause reported by one of the committees, that “ the Legislature shall have power to fulfil the engagements which have been entered into by Congress,” was objected to on the one hand as being unnecessary, since the new government unquestionably succeeded to the obligations of that which it supplanted ; and on the other hand as an implication

¹ Chapter IX.

that it would be within the discretion of the legislature to decide whether or not it would fulfil those obligations. Manifestly, if the addition suggested to the first clause had been adopted, it would have had the effect to limit the purposes for which the taxing power might be exercised.

There is no evidence that this consideration had any weight with the convention ; but at all events the phraseology of the committee's report was not adopted. Mr. Gouverneur Morris offered a substitute, providing that "the Legislature shall discharge the debts and fulfil the engagements of the United States," and this was agreed to, after a motion had been defeated to substitute for the words "discharge the debts," the words "liquidate the claims," — a motion which was designed to open the way for a bargain with the public creditors.

On August 25 the following proposition, with others, offered by Mr. McHenry and Mr. Pinckney, was referred to a new committee : —

All duties, imposts and excises, prohibitions or restraints, laid or made by the Legislature of the United States, shall be uniform and equal throughout the United States.

This is interesting as the origin of a clause which ultimately found a place in the Constitution ; and it is significant of the prevalent opinion that prohibitions and restraints would accompany imposts.

A brief passage from the record of August 28 must be quoted nearly in full, inasmuch as it contains the only direct reference that is to be found in the proceedings of the convention to the subject of encouraging manufactures by means of impost duties : —

Mr. Madison moved that the words "nor lay imposts or duties on imports" be transferred from Article 13, where the consent of the General Legislature may license the act, into Article 12, which will make the prohibition on the States absolute. He observed that as the States interested

in this power, by which they could tax the imports of their neighbors passing through their markets, were a majority, they could give the consent of the Legislature, to the injury of New Jersey, North Carolina, etc.

Col. Mason [Virginia] observed that particular States might wish to encourage, by impost duties, certain manufactures for which they enjoyed natural advantages, as Virginia, the manufacture of hemp, etc.

Mr. Madison. The encouragement of manufactures in that mode requires duties not only on imports directly from foreign countries, but from the other States in the Union; which would revive all the mischiefs experienced from the want of a general government over commerce.

Mr. Madison's point is made somewhat vaguely; but it is evident that his objection was not to the use of import duties in protecting manufactures, but to the use of them by individual States. But whatever his meaning may have been, the convention rejected his motion. Subsequently the question came up in another form, and the clause, as ultimately adopted, forbids a State without the consent of Congress to lay any "duties on imports or exports, except what may be absolutely necessary for executing its inspection laws." The significance of this clause must be considered in the discussion of the constitutional question, and the history of it is reserved for another chapter.

The parts of the Constitution that had not been acted upon were, on August 31, referred to a committee of one from each State. The committee reported on the 4th of September that the two clauses which introduce the enumeration of the powers of Congress should be in this form:¹—

The Legislature shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and

¹ The punctuation of the original is here followed closely. As will be seen hereafter a part of the argument as to the constitutionality of a protective tariff turns upon the correct punctuation of the first clause.

provide for the common defence and general welfare of the United States ;

To regulate commerce with all nations and among the several States and with the Indian tribes.

These clauses were unanimously agreed to. On the 10th of September the Constitution was referred to a committee "for revising the style and arrangement of the articles agreed on." The committee reported on the 12th. Its rearrangement made the enumeration of the powers of Congress section 8 of Article I., and the clauses relating to the taxing power and the regulation of commerce were as follows :—

The Congress may by joint ballot appoint a Treasurer. They shall have power —

To lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States.

To borrow money on the credit of the United States.

To regulate commerce with foreign nations, among the several States, and with the Indian tribes.

On the 14th of September "the words, 'but all such duties, imposts and excises shall be uniform throughout the United States,' were unanimously annexed to the power of taxation," without debate. The only further change was the striking out of the clause relating to a treasurer. The phraseology of the clauses, with these modifications, is that of the Constitution as it is ; and together with the general authorization to "make all laws which shall be necessary and proper for carrying into execution the foregoing powers," these clauses furnish the authority under which tariff laws, whether for revenue, for protection of domestic industry, or for regulating trade, are enacted.

Inasmuch as substantially the whole of every reference to these clauses has been here reproduced in full, it will be seen that they were practically adopted *nem. con.*

The original suggestion of Mr. Pinckney appears almost textually in the final draft. At no time was there a proposition or a hint that the taxing power should be limited. No member of the convention offered an amendment designed to restrict the purposes of taxation. One amendment was so clumsily worded that it would have had the effect of a limitation; but it was not adopted. Mr. Madison does not report a single member as offering even a formal opposition to the grant of power in its most extended form.

The "Federalist" touches, in several passages, upon the taxing power vested in Congress; but the eminent men who wrote that remarkable series of papers introduced into the discussion little that is serviceable for a study of tariff history. They argued at length that it was necessary that the general government should have the exclusive right to lay imposts, but they said little or nothing as to the purposes for which duties might properly be levied. They also maintained that it was a wise provision of the Constitution to leave other modes of taxation to the concurrent use of the States and of Congress. In support of this thesis they adduced the relief from excessive taxation upon imports which would be afforded by the privilege of levying excises. The following passage is significant in this connection:—

Suppose, as has been contended for, the federal power of taxation were to be confined to duties on imports; it is evident that the government, for want of being able to command other resources, would frequently be tempted to extend those duties to an injurious excess. There are persons who imagine that they can never be carried to too great a length; since, the higher they are the more it is alleged they will tend to discourage an extravagant consumption, to produce a favorable balance of trade, and to promote domestic manufactures.¹

¹ The "Federalist," no. xxxiii. By Hamilton. For another reference to the subject, rather interesting than important, see no. xl.

So far as the above passage is of any value it is evidence that before the Constitution went into operation one of the chief expounders of its provisions drew public attention to the fact that the taxing power might permissibly be used not only to obtain revenue but to promote manufactures. This of itself does not furnish a strong argument as to the intention of the framers of the Constitution, nor of those who secured its ratification by the States. It has a certain usefulness in connection with other facts. For it is only fair to say that at the time when the question of adopting the new Constitution was in doubt the matter of protecting native industry was subordinate to far more important considerations. No one has ever contended or will ever contend that the possibility of such protection under a more efficient government affected a single vote in any State convention.

Mr. Madison, indeed, in his letters to Joseph C. Cabell, written in 1828, asserts positively that the right to regulate commerce with foreign nations "embraces the object of encouraging by duties, restrictions, and prohibitions the manufactures and products of the country." He asserts further that such a use of the power "accords with the intention and expectation of the States in transferring the power from themselves to the government of the United States." He could give, as he admitted, but one direct, positive reference to the subject in all the debates in the State conventions by which the Constitution was ratified. Mr. Dawes said, in the Massachusetts convention, "if we wish to encourage our own manufactures . . . we must give Congress the powers in question." Nevertheless, his acquaintance with the public sentiment of the country was intimate and accurate. It may fairly be argued that the reason so little account was made of the power of protection by imposts was that it was obvious and was disputed by no one.

Upon the more general question — the propriety of the

grant of exclusive power to levy imposts — there was absolutely no difference of opinion. In none of the pamphlet and newspaper discussions while the adoption of the Constitution was still pending,¹ so far as is known, was there a note of opposition to the grant of power to Congress or to the denial of the power to the States. There was opposition to the grant of a power to tax by means of excise laws.

So far, then, the Constitution itself, the debates in the convention which framed it, and the public discussion of its provisions prior to its adoption, furnish negative evidence only as to the intent of its framers. That is to say, the possibility that the taxing power, in connection with the power to regulate trade, might be employed for other purposes than the raising of revenue was more or less in men's minds, and was alluded to, on some occasions at least, and provoked no protest. The common understanding of the extent of the power must be sought in the action of Congress when it began to exercise the powers vested in it.

¹ See "Pamphlets on the Constitution" and "Essays on the Constitution," compiled by Paul Leicester Ford.

III

THE FIRST TARIFF

THE first Congress under the Constitution was summoned to meet in New York on March 4, 1789. A quorum of the representatives was formed on April 1; a majority of senators from the eleven States which had ratified the Constitution did not appear until April 6. Two days afterward, on April 8, the House of Representatives being in Committee of the Whole on the State of the Union, Mr. Madison offered a resolution that specific duties should be levied on spirituous liquors, wines, teas, sugars, pepper, cocoa, and spices, and an ad valorem duty on all other articles; also a tonnage duty on American vessels in which merchandise was imported, and a higher rate on foreign vessels. In introducing the subject he referred to two points for consideration, the first being the regulation of commerce, the second the raising of revenue. Inasmuch as the situation admitted of no delay he recommended a temporary measure, based upon the twice-rejected proposition of the Continental Congress, of a five per cent. horizontal duty on all imported goods, although he was "well aware that the changes which have taken place in many of the States and in our public circumstances since that period will require, in some degree, a deviation from the scale of duties then affixed." These words are sufficiently vague; they may or may not refer to the springing up of a protective sentiment. At all events those "changes" did require and ultimately effected the deviation he foreshadowed. His own phrase, written forty years later, that "no adverse inference" on this

point can be drawn from his speech, is perhaps all that can be said.

The resolution was briefly discussed and laid over until the next day, when it was taken up. Mr. Fitzsimons, of Pennsylvania, urged a large extension of the list of enumerated articles to be subject to specific duties. His scheme was, speaking broadly, the Pennsylvania tariff law.¹ He dissented from the view that it was best to adopt a temporary measure, and maintained that it was advisable to consider the whole question at once.

In order that the reader may be prepared for the discussion later on of the character of the measure which resulted from Mr. Madison's resolution, it is well to say here that two opposite views have been taken of the Tariff Act of 1789. It is held on the one hand that it was designed by Congress to be a protective tariff, in the usual modern sense of the term; on the other hand that it was almost wholly a revenue act, and that the phrase in the preamble "for . . . the encouragement and protection of manufactures," so far as it is not meaningless had a special political signification quite different from that which attaches to the words in our day. The somewhat detailed although greatly condensed summary of the debate upon which we now enter, will enable the reader to judge which contention is nearer the truth. In this summary, it is believed, will be found every expression contained in any record of the debates extant, which will assist in arriving at the truth.

The resolution of Mr. Fitzsimons led to a general debate upon the scope of the proposed act. Mr. Hartley, of Pennsylvania, remarked that it appeared to be "in the contemplation of some to enter on this business in a limited and partial manner, as it relates to revenue alone; but for my own part I wish to do it on as broad bottom as is at present practicable. . . . If we consult the history

¹ Hill, "First Stages of the Tariff Policy," p. 110.

of the ancient world we shall see that they have thought proper, for a long time past, to give great encouragement to the establishment of manufactures by laying such partial duties on the importation of foreign goods as to give the home manufactures a considerable advantage in the price when brought to market. . . . I think it both politic and just that the fostering hand of the general government should extend to all those manufactures that will tend to national utility."

Mr. Madison occupied a peculiar position. His first desire was for the prompt passage of a revenue act, in order to give the government the benefit of the duties on the spring importations. He was therefore opposed to entering upon a consideration of the tariff policy save as it related to revenue. Moreover, if a general consideration of the subject were to be undertaken, his theoretical opinions and his perception of the situation and obligations of the new government drew him in opposite directions. The following extracts from his speech on Mr. Fitzsimons's resolution touching upon the point last mentioned, illustrate his perplexity:—

The States that are most advanced in population and ripe for manufactures ought to have their particular interests attended to in some degree. While those States retained the power of making regulations of trade they had the power to protect and cherish such institutions. By adopting the present Constitution they have thrown this power into other hands; they must have done this with an expectation that those interests would not be neglected here.

I own myself the friend to a very free system of commerce, and hold it as a truth that commercial shackles are generally unjust, oppressive and impolitic. It is also a truth that if industry and labor are left to take their own course they will generally be directed to those objects which are most productive, and this in a more certain and direct manner than the wisdom of the most enlightened legislature could point out. Nor do I think that the

national interest is more promoted by such restrictions than that the interest of individuals would be promoted by legislative interference directing the particular application of its industry. . . . If my general principle is a good one — that commerce ought to be free, and labor and industry left at large to find its proper object — the only thing which remains will be to discover the exceptions that do not come within the rule I have laid down.

Duties laid on imported articles may have an effect which comes within the idea of national prudence. It may happen that materials for manufactures may grow up without any encouragement for this purpose. It has been the case in some of the States, but in others regulations have been provided, and have succeeded in producing some establishments which ought not to perish from the alteration that has taken place; it would be cruel to neglect them and divert their industry to other channels.

It is easy for a flippant writer to derive amusement for himself and his readers from the foregoing remarks, which, in a logical sense, are certainly not self-consistent. Read in the light of Mr. Madison's character and of his position as a statesman at the time, they are highly creditable to him. He afterward changed his opinion as to the expediency of promoting manufactures by artificial restraints. In 1789 he avowed openly a disbelief in the wisdom of the policy, but was ready to yield his judgment on the general principle in order that the new government might carry into effect with loyalty and good faith the engagements made by the States which they, by ratifying the Constitution, had forfeited the power to make good. When it came to a vote between Mr. Fitzsimons's proposition and his own, he apparently acquiesced in the choice of that which looked toward a general consideration of a tariff policy and an adoption of the system of protection. It does not appear that a division was called for when the question was put. Mr. Fitzsimons's resolution was adopted unanimously.

The House of Representatives now proceeded to consider

the details of the bill in Committee of the Whole. The standing committee system was then unknown, and all the members participated in framing each measure that was passed. A long debate took place on the duties on rum, the first article on the list, and on molasses. New England was deeply interested in the importation of molasses from the West Indies, in exchange for the cheapest kinds of fish, and in distilling rum. A duty of fifteen cents a gallon was proposed on Jamaica rum. Mr. Laurance, of New York, wished the duty reduced to twelve cents. He thought it necessary to consider carefully the amount of duty to be laid, "especially if our main object is to obtain a revenue by impost." Fifteen cents was about one third the value of the article, and he feared that so high a rate would lead to smuggling. Mr. Fitzsimons did not think the difference between twelve cents and fifteen would increase the tendency to smuggling; and since it was advisable to raise the rate so high as to lessen consumption, he favored the higher rate. Mr. Boudinot, of New Jersey, thought that if a high duty did not discourage the use of ardent spirits it might discourage the people of the West Indies from turning their molasses into rum. In which case they would "have no other market for molasses than this country, and our own distilleries, with the advantages arising therefrom, will be able to rival them in the manufacture of that article; so far it may tend to the benefit of the country." The committee, after a few remarks by other members, containing nothing new, agreed to the duty of fifteen cents, which was the first rate of duty on an imported article ever fixed by Congress. But the subject came up again and again before the act was passed, and the rate was repeatedly changed.

The next question was filling the blank for molasses. Mr. Madison intimated that the duty in this case was in reality a duty upon the rum which was to be made from

it. "I believe," he said, "it will be best to lay our hands upon the duty by charging this article upon its importation, to avoid a more disagreeable measure." His reference was of course to an excise, and the argument vaguely hinted at was that ardent spirits ought to be taxed; that an import duty upon rum would reach but a small part of the liquor consumed; and that the alternative of a tax upon molasses was an excise upon spirit. It may be remarked here, in order to avoid making too long extracts from the debates, that an internal tax was a bugbear to most of the members, — to so large a number, apparently, that the only exceptions were those whose opposition to certain duties was irremovable. Mr. Madison, and those who shared his views on the question of excise, were ready to agree to almost any import duty rather than resort to the other mode of taxation. "I would, therefore," Mr. Madison continued, "lay such a duty on molasses as is proportioned to what we have fixed upon rum, making an allowance in favor of our own manufacture." He thought eight cents such a sum, but was not certain, and should not "pertinaciously adhere" to it if it were too high. The difference between country rum at eight cents — a gallon of molasses yields a gallon of rum — and the duty fixed upon West India rum was "sufficient to answer the purpose of protecting the manufacture." Mr. Laurance, of New York, reminded the committee that molasses was not merely the raw material of rum but also a necessary among the poorer class of citizens. "Consequently if you tax it too high you unequally burthen that part of the community who are least able to bear it." This argument also was much used in the debate, to the great benefit of the New England distillers. Mr. Ames, of Massachusetts, contended that the proposed tax would not be equitable, considered as a tax upon a luxury, because it would be paid almost exclusively by Massachusetts; nor as a part of a general

system unless it was intended to lay a tax of fifty per cent. upon merchandise generally. He said that it would destroy the trade with the West Indies of fish for molasses. "The very existence of the Eastern States depends upon the encouragement of their navigation and fisheries, which receive a deadly wound by an excessive duty upon the article before us." After further debate the rate was fixed at six cents a gallon.

When the clause relating to malt was reached — for which a duty of nine cents a bushel was proposed — Mr. Fitzsimons remarked that he thought this manufacture worthy of encouragement. "If the morals of the people were to be improved by what entered into their diet, it would be prudent in the national legislature to encourage the manufacture of malt liquors." Mr. Laurance, also, would have the tax so high as to give a decided preference to American beer. It would also encourage agriculture by inducing the raising of malt and hops. Mr. Gale, of Maryland, thought the duty of nine cents would operate as a prohibition on the importation of beer. Mr. Sinnickson, of New Jersey, was in favor of the nine cents rate because it would prohibit foreign beer. "The manufacture would increase, and of consequence the price would be lessened." Mr. Madison moved a duty of eight cents. "He did not think this sum would give a monopoly, but hoped it would be such an encouragement as to induce the manufacture to take a deep root in every State in the Union; in this case it would produce the collateral good hinted at by the gentleman from New Jersey." The rate of eight cents was agreed to. It was afterward increased to ten cents, or one cent more than the rate which was anticipated to operate as a prohibition upon importation.

A brief discussion took place upon a motion to fix the duty on tallow candles at two cents a pound. Mr. Tucker, of South Carolina, opposed it on the ground that

it would bear unequally upon those States which were obliged to import their candles. This remark drew from Mr. Fitzsimons the sharp retort that every article imported into the State which that gentleman represents, from which revenue is to be raised, he moves to have struck out. Not only Mr. Fitzsimons but several other gentlemen also spoke in favor of the tax as a measure to protect the manufacture, and the duty was voted.

When the article of steel was considered, Mr. Lee, of Virginia, moved to strike out the item. The effect of the motion if successful would be to throw steel back into the class of articles to be charged with five per cent. ad valorem. Mr. Lee did not believe that any gentleman would contend that enough of this article to answer consumption could be fabricated in any part of the Union. Hence it would operate as an oppressive, though indirect, tax upon agriculture. Mr. Tucker regarded the manufacture as one deserving a bounty rather than an impost, for the bounty would increase the quantity, while an impost would diminish the quantity and increase the price. Mr. Clymer, of Pennsylvania, admitted that the manufacture of steel was in its infancy, but since all the materials necessary to make it were to be found in almost every State in the Union "he deemed it prudent to emancipate our country from the manacles in which she was held by foreign manufacturers." He mentioned one furnace in Philadelphia which, protected by a small duty levied by Pennsylvania on imported steel, had produced 300 tons in two years, and now made 230 tons annually. With a little further encouragement it might supply enough steel for the consumption of the whole Union. He pleaded, therefore, for "a degree of patronage to a manufacture which a moment's reflection would convince them was highly deserving of protection." Mr. Madison "thought the object of selecting this article to be solely the encouragement of the manufacture, and not

the revenue"; for on any other consideration, as observed by Mr. Tucker, it would be more proper to give a bounty on the manufacture. It was so materially connected with the improvement of agriculture and other manufactures that he questioned its propriety, even on that score. Mr. Tucker and Mr. Fitzsimons discussed the duty as a burden on agriculture. Mr. Tucker thought the tax would be "big with oppression" on his State; Mr. Fitzsimons begged him and other gentlemen to get rid of local considerations. By so doing "what operates to the benefit of one part [of the country] in establishing useful institutions will eventually operate to the advantage of the whole." The committee agreed upon a rate of 56 cents per 112 pounds.

The cordage and hemp duties elicited a debate on the policy of an impost on raw materials, more suggestive than that which had taken place on the molasses and rum question. The proposition before the committee originally was to lay a duty on cordage only; hemp was not mentioned. There was objection to taxing articles used in shipbuilding; but the encouragement of the cordage manufacture seemed to the members advisable, in order to render the country independent of the foreign supply of an article so important. This view prevailed, and a duty of fifty cents per hundredweight was voted. Then Mr. Madison, remarking that he was doubtful of the expediency of raising the price of anything that entered into the structure of vessels, said that nevertheless if it were good policy to tax cordage to encourage the ropemakers it was also politic to encourage the production of hemp, the raw material of cordage. He moved to put a specific duty upon it. Much of the western country was adapted to raising hemp. As might be expected, the opinions of members on this question were decidedly colored by their respective local interests. The New England members were opposed to the cordage duty if

the duty were so high as to injure shipbuilding; they were opposed to the hemp duty altogether. Virginia, South Carolina, and western Pennsylvania supported the duty on hemp as an encouragement to agriculture. A few sentences, quoted out of their connection and without mentioning the speakers' names, will show the drift of the discussion.

By the encouragement given to manufactures you raise them in price, while a competition is destroyed which tended to the advantage of agriculture. He thought the manufacturing interest ought not to stand in the way of the other [agriculture], but as the committee had agreed to give it encouragement he hoped the other would receive its share of legislative support. . . . Agriculture is entitled to its proportion of encouragement. . . . Manufactures are useful establishments, but our circumstances do not admit us to become an extensive manufacturing country.

Arguments such as these were successful, and the duty was voted. The rate was fixed at fifty cents a hundred-weight, the same as that on cordage. In our time it would be supposed that the acceptance of a duty on the raw material as well as on the finished goods was a result of "log-rolling," but it was manifestly not so here. The hemp duty at the same rate as that on cordage left the rope-makers in a worse position than they would have been with rope on the five per cent. list; for they would have to import all the hemp they used until agriculture had done its share in the production. The inconsistency was remedied before the bill was finally passed. The duty on cordage was raised to ninety cents; that on hemp was fixed at sixty cents; and the duty on the raw material did not go into effect until the beginning of the year 1791.

On nails, spikes, tacks, and brads the debate was brief. The Southern members opposed a duty,—it would impose a very unequal burden upon their constituents. The New

England members favored it. The manufacture was already established. Mr. Ames said the production was "prodigiously great." He pictured the establishment of kitchen forges, at which all the members of a country family worked, making nails, during the winter evenings. Mr. Tucker made a sharp thrust. He judged from what was said of the little expense and the great facility of manufacturing nails that it stood in no need of legislative assistance. Why lay a duty on foreign nails when they cannot rival you if you make them as good and as cheap? A duty of one cent a pound was voted, and was not afterward changed.

The discussion on the salt duty involved considerations quite different from those touched upon in the previous debates. There was at that time no question of protecting the salt manufacture. The anti-tariff men, including Messrs. Tucker, Burke, and Smith, of South Carolina, Mr. Moore, of Virginia, and Mr. Scott, of western Pennsylvania, opposed the tax as imposing a heavier burden upon the poor than upon the well-to-do. One of the members went so far as to warn the House that some of the inhabitants of the interior of South Carolina were opposed to the new government, and "it will be a melancholy circumstance to entangle ourselves at this time among the shoals of discontent." Mr. Laurance, of New York, answered this suggestion in dignified terms: "I believe gentlemen will find it difficult to point out any kind of support which they give to government if this duty shall be refused; yet it was hinted that the government would be endangered if they were called upon for this. . . . I will not suppose the government hazarded by making a revenue law that is right and justifiable on general principles; if it is, upright men may be willing to risk the consequences." Mr. Madison pointed out the fact and elaborated it, that if the salt tax were found to operate more hardly upon the poor than on the rich, it

stood almost alone in that respect; that most of the taxes did not touch the poor man at all. The salt tax must be considered not by itself but as a part of a system. In the end a duty of six cents a bushel was voted. It may be remarked that this article was almost the only one discussed chiefly in its bearing on the revenue, among all the classes of goods mentioned in the first tariff,—so far, at least, as the scope of the debate is fairly represented in the “Annals of Congress.”

A duty of three cents a bushel was laid on coal, on motion of Mr. Bland, of Virginia, who had been a consistent opponent of protective duties up to this point. He remarked that there were mines open in Virginia capable of supplying the whole country, “if some restraint was laid on the importation of foreign coal.” In the general debate before the discussion of separate articles began, the same gentleman is reported thus: “When he looked at the list of articles he saw some calculated to give encouragement to home manufactures. This might be in some degree proper; but it was a well-known fact that the manufacturing arts in America were only in their infancy, and far from being able to answer the demands of the country; then certainly you lay a tax upon the whole community in order to put the money in the pockets of a few whenever you burthen the importation with a heavy impost.”

The question of protecting the rum distilleries came up for the second time, on a motion to allow a drawback of six cents a gallon on country rum exported. The motion was rejected.

A protracted debate took place upon the proposition to levy a tonnage duty discriminating against the shipping of countries with which the United States was not in alliance. The question came up again repeatedly; ultimately the tonnage duty was separated from the revenue bill and passed in another bill. Undoubtedly the navigation

laws are a part of the protective system, but as they form quite a distinct branch of tariff legislation, no further reference will be made to them. When the committee had come to a decision with reference to this matter, its resolutions were reported to the House.

According to the system of parliamentary procedure in those days, the whole ground was gone over again in the House, and the measure was then referred once more to the Committee of the Whole. Much of what was said was a repetition of arguments already worn threadbare. The new matter only will therefore be presented here.

The molasses duty was once more attacked. The Massachusetts representatives urged that the rate of six cents would be a great hardship to New England. Mr. Thacher, of that State, introduced a delicate subject by suggesting, "Supposing a member from Massachusetts were to propose an impost on negroes, what would you hear from the Southern gentlemen, if fifty dollars were the sum to be laid? And yet this is not more than the proportion laid on molasses. If the pernicious effects of New England rum have been justly lamented, what can be urged for negro slavery?" He was subsequently rebuked for making this remark, but not so severely as for his suggestion that "if the support and good-will of 400,000 citizens are worthy of cultivation the House will decide the present question with candor and moderation." Mr. Boudinot, who spoke next, said in the course of his remarks, "It has been hinted that 400,000 people disapprove the measure. . . . I have so high an idea of the good sense and patriotism of the citizens of Massachusetts that I never can be persuaded that if this House, on principle, think it expedient to lay a duty on any particular article, the inhabitants of that State will rise in opposition to the measure."

As an indication of what seemed to the members, in their inexperience, the average rate of duties they were establishing, this remark of Mr. Boudinot is pertinent: "I

have endeavored to establish some principle by which we should be governed in laying the duties. I have endeavored to do this in my own mind, and have fixed on about twenty-five per cent. on the value of the articles at the time and place of importation. . . . I agree with the gentleman from Massachusetts that six cents are too high. If we reckon the cost of the molasses we shall find five cents to be nearer the proportion of twenty-five per cent. which we have laid on other articles." The debate was continued actively by Mr. Madison, Mr. Ames, and others, without developing anything useful for our present purpose. The motion to reduce the duty on molasses was then rejected; but it was voted to grant a drawback of three cents on every gallon of rum exported.

After several days spent in a reconsideration of the question of tonnage dues, Mr. Tucker, of South Carolina, made a fresh onslaught upon the tariff duties. In a long speech he urged a reduction of the rates throughout the list. He regarded them as so high that they would lead to smuggling. Upon another point he remarked: "The other reason for which I am opposed to high duties on enumerated articles is, because it tends to the oppression of a certain description of citizens and particular States, in order to promote the advantage of other States and other citizens." Mr. Tucker's speech extended over two days. It ended with a motion to reduce by six cents a gallon the duty on distilled spirits, "in order to begin with the first article."

The debate drawn out by this motion was grave and serious. Mr. Ames, in significant language, warned the House that if it passed an unpopular revenue act, the people would be against the new government. Mr. Madison, adopting a conciliatory tone, urged that the duties were not too high for the revenue which was absolutely essential to support the government and to provide for the debt. Furthermore, there was no escape from the policy

of deriving the revenue from customs duties. "There are but two objects to which, in this dilemma, we can have recourse, — direct taxation and excises. Direct taxation is not contemplated by any gentleman on this floor, nor are our constituents prepared for such a system of revenue; they expect it will not be applied to until it is found that sufficient funds cannot be obtained in any other way. Excises would give particular disgust in some States, therefore gentlemen will not make up the deficiency from that quarter." Eventually the motion to reduce the spirit duty was defeated, 19 in favor of the motion, 26 opposed to it.

A final attack was made upon the molasses duty, and the rate was reduced to five cents a gallon. An ineffectual attempt to levy a duty of ten dollars on every negro slave imported concluded the deliberations of the House upon the bill at this stage, and it was ordered to be engrossed for a third reading. On the next day, May 15, it was recommitted to the Committee of the Whole; whereupon Mr. Madison made a motion to amend by limiting the operation of the law to a certain time. An animated debate took place upon this proposition, which derives its importance from the fact that some writers have held the result to be a defeat of the protectionist party in the First Congress, and have drawn from it a part of their argument that the first tariff bill was not designed as a protective measure. Upon this point it is to be said that the reasons urged for a limitation of the time within which the act was to be operative were, first and chiefly, that an act fixing permanently the rate of taxation would be virtually an abdication by the popular branch of Congress of its right to originate financial legislation, since a change could then be effected only with the concurrence of the Senate; secondly, that it was contrary to the spirit of liberty to make taxes permanent; and, thirdly, that as the system was wholly new, and no one could estimate with a pretence to accuracy the yield of the taxes, it was wise

to make a change easy. The only argument advanced in opposition to this view was to the effect that the restoration of the public credit was, next after the provision for the support of the government, the chief object of the bill; and that a revenue act to run a few years only would not reassure the creditors of the nation. The only reference during the debate to the subject of encouraging manufactures was made by Mr. Madison: "Besides the restoration of public credit, he thought the act had in view the encouragement of a particular description of people which might lead them into enterprises of a peculiar nature, for the protection of which the public faith seemed to be pledged. But would gentlemen infer from hence that no alteration ought to take place if the manufactures were well established?" No member took notice of this suggestion and it evidently had no influence upon the result. The yeas and nays were, for the first time in the history of Congress, called upon this amendment, which was carried by a vote of 41 to 8. The negative vote was given by two Massachusetts members, one from New York, three from New Jersey, and two from Pennsylvania. Most of those who had advocated protectionist clauses voted in the affirmative, and three of the eight negative votes were given by members who had voted more frequently against such clauses than in favor of them. It was in no sense a test vote. The time for the expiration of the act having been fixed at the end of the session of Congress to be held next after the first day of June, 1796, the bill was passed by the House of Representatives, on the 16th of May.

The sessions of the Senate were secret, and no report of the debates in that branch have been preserved. Almost the only information we have of what took place from day to day behind the closed doors is contained in the "Journal" of William Maclay, senator from Pennsylvania from 1789 to 1791. Mr. Maclay was an extremely strong partisan and a vigorous hater. His journal abounds in

accusations and insinuations against those from whom he differed. He disliked Mr. Adams, the Vice-President, extremely, and lost no opportunity to repeat and jeer at whatever seemed to him absurd or puerile in the conduct and speech of that gentleman. In these circumstances too much reliance should not be placed upon Mr. Maclay's version of the debates in the Senate. The following extracts, which are all that are necessary for our purpose, must be taken with all the caution and reserve here recommended. The first extract shows how ready he was to believe evil of his associates. In this case he criticised Mr. Fitzsimons, who like himself was an advocate of protective duties, and who, in spite of the criticism, was an honorable gentleman.

May 10. — A Philadelphia merchant was in with Mr. Wynkoop. He alleged that Mr. Fitzsimons delayed the impost bill while his own Indiamen should arrive, for it seems he has more than one.

May 21. — An idea has gone abroad that the mercantile interest has been exerted to delay this [impost] bill. The merchants have undoubtedly regulated the prices of their goods agreeable to the proposed duties, so that the consumers of dutied articles really pay the whole of the impost.

May 25. — I fear that our impost will be rendered in a great measure unproductive. This business is the work of the New England men. They want the article of molasses quite struck out, or at least greatly reduced; therefore they will strike at everything, or, to place it in a different point of view, almost every part will be proscribed either by one or other of those who choose to be opponents, for every conspirator must be indulged in the sacrifice of his particular enemy.

May 26. — The impost was taken up. . . . All ran smoothly until we came to the molasses. Till quarter after three did the New England men beat this ground, even to the baiting of the hook that caught the fish that went to buy the molasses. The motion was to reduce it to four cents from five. . . . The vote for four cents carried. All

the arguments of the other House were repeated over and over.

May 28. — Senate met. Cables, cordage, etc., came up. They stood at seventy-five cents. Mr. Langdon [New Hampshire] spoke warmly against this. Mr. Morris [Robert, Mr. Maclay's Pennsylvania colleague] moved a reduction to fifty cents. I urged him so much that he said sixty. This was seconded. I had to show some pointed reason why I urged sixty. Indeed, it was much against my will that any reduction took place. The protecting duties of Pennsylvania were 4s. 2d., about fifty-six cents. To place the manufacturers of Pennsylvania, who had a claim to the faith of the State, on a worse ground than they stood before, would be injurious in a degree to their property and break the engagement the State had made with them. This argument went to all the protecting duties of Pennsylvania. At the close of the war the protecting duties on cordage called for the manufacture of it. The manufacture called for the hemp. It was, in fact, a bounty on the raising of that article. The effect of the protecting duty in Pennsylvania was at first felt by the importers. It was for a time an unproductive expense. It is thus with almost every distant prospect. He that plants an orchard cannot immediately eat the fruit of it; but the fruit had already ripened in Pennsylvania, and so it would in other places. I was up four times in all. We carried it, however, at sixty.

We passed on with little interruption until we got to twine. Mr. Lee [Virginia] kept us an hour and a quarter on this business, because the Virginians had hitherto imported their nets from Britain. Once for all, I may remark of him [Mr. Lee] that he has given opposition to every article, especially the protecting duties. He declares openly against the principle of them. Mr. Grayson [Virginia, a steady and consistent opponent of the Constitution] declares against all impost as the most unjust and oppressive mode of taxation. . . .

Now came the postponed article of loaf sugar. Lee labored with spite and acrimony in this business. He said the loaf sugar of America was bad. It was lime and other vile compositions. He had broken a spoon in trying to dissolve and separate it, and so I [Lee] must go on

breaking my spoon and three millions of people must be taxed to support half a dozen people in Philadelphia. He pronounced this sentence, especially the part about the spoon, with so tremulous an accent and so forlorn an aspect as would have excited even Stoics to laughter. There was a laugh, but no retort on him. I supported the motion by showing that the sugar-baking business was of importance, as it gave employment to many other artificers, — the mason, bricklayer, carpenter, and all the artificers employed in building, for they had to build largely. . . . I thought this as plain a subject as could come before the House, and yet we divided, and the Vice-President gave us the casting vote.

May 29. — Now came salt. Up rose Mr. Lee, of the Ancient Dominion. He gave us an account of the great revenue derived from salt in France, England, and all the world. He concluded a lengthy harangue with a motion for twelve cents, which in his opinion was vastly too low. . . . What shall I think of Lee, this Ishmael of the House? He seemed disposed to destroy the whole effect of the impost bill on every other article. The tax on salt he knows must be odious, and this he is for doubling at the first word. He is a great advocate for an excise. If I really wished to destroy the new Constitution, to injure it to the utmost of my power, I would follow exactly the line of conduct he has pursued. Far be it, however, from me to say this of him. People employ the same means for very different ends, and such is the vanity of human opinion that the same object is often aimed at by means directly opposite.

June 2. — After some preliminary business, proceeded on the impost bill without much opposition till we came to an enumeration of fifteen or sixteen articles which all stood at seven and a half per cent. The most of these articles stood in the old protecting duties of Pennsylvania at twelve and a half per cent. I feared much the spirit of reduction would get into the opposers of the impost, and that they would be for lowering everything. From this sole motive I would have an augmentation, by way of securing the duty where it was. However, I had better ground. I set out with naming over the greater part of the articles on which the protecting duties of

Pennsylvania were over twelve and a half per cent. and thirteen per cent. in New York. I reasoned from the effect of these duties in promoting the manufacture. But by the present duties the manufactures would stand on worse ground by five per cent. than they had done under the State laws; that although the United States were not absolutely obliged to make good the engagements of the States to individuals, yet, as individuals had embarked their property in these manufactures, depending on the State laws, I thought it wrong to violate these laws without absolute necessity. I was, as usual, opposed by the Southern people.

June 11. — Butler¹ flamed away and threatened a dissolution of the Union, with regard to his State, as sure as God was in the firmament! He scattered his remarks over the whole impost bill, calling it partial, oppressive, etc., and solely calculated to oppress South Carolina; and yet ever and anon declaring how clear of local views, how candid and dispassionate he was. He degenerated into mere declamation. His State would live or die glorious, etc. We, however, got through by three o'clock.

The last sentence means that work on the impost bill was finished on that day. There was not a little friction between the two houses by reason of the amendments made by the Senate, but the differences were composed, the bill was passed, and on the fourth of July it was signed by President Washington.

The act levied specific duties upon thirty-six enumerated articles: fifteen per cent. *ad valorem* on carriages; ten per cent. on seven articles; seven and one half per cent. on sixteen; and five per cent. on all other goods except seventeen articles, which constituted the first free list. Taking the classes in the above order, the duty finally

¹ Pierce Butler, of South Carolina. Mr. Butler had appeared in the Senate but a few days before, and had immediately thrown himself into the fight against the impost bill. Mr. Maclay calls him "the most eccentric of creatures." He had thought Mr. Lee, of Virginia, bad enough, but Mr. Butler amazed him.

laid on Jamaica proof spirits was ten cents a gallon, and on molasses two and a half cents. It will be remembered that the rates originally agreed upon in Committee of the Whole were fifteen cents and six cents respectively. Malt was charged ten cents a bushel; brown sugar one cent, and loaf sugar three cents a pound; tallow candles two cents a pound; untarred cordage and yarn ninety cents per hundredweight [112 pounds]; steel fifty-six cents per hundredweight; nails and spikes one cent a pound; salt six cents a bushel; coal two cents a bushel. The other items of this class gave rise to little controversy and need not be mentioned. There was a complicated system of tea duties, varying with the kind of tea, the place from which imported, and the nationality of the vessels in which the tea was brought to the country. Bohea tea coming direct from China or India, in vessels owned wholly by American citizens, paid six cents; coming from other countries, eight cents; arriving in vessels owned by foreigners, fifteen cents. The ten per cent. ad valorem duty was levied on glass; china, stone, and earthenware; gunpowder; paint; buckles; gold and silver leaf, and lace. The seven and one half per cent. rate applied to some important classes of goods; paper, cabinet ware, buttons, gloves and leather, hats, millinery and ready-made clothing, iron castings, and metal wares. The free list included saltpetre, old metal, wool, cotton, dyestuffs, hides, and fur. A duty of seventy-five cents per hundredweight was laid on hemp, and of three cents a pound on cotton, to become operative on December 1, 1790. A drawback was granted of the full duty, less one per cent., upon all imported goods exported within twelve months after the payment of duty; and a bounty, in lieu of a drawback on the salt used, of five cents on each quintal of dried fish, barrel of pickled fish, and barrel of salted meat, exported. All the duties imposed by the act were subject to a discount of ten per cent. if the

goods were imported in vessels wholly owned by American citizens.

The passage of this act was a political event of surpassing importance. It was both the first assertion of sovereignty on the part of the government that came home to the people, and a test of the strength of the government itself. The formation of the Constitution had been a suggestion of a daring experiment. The ratification of the Constitution by eleven of the States gave reason to hope that the experiment might be successful. Then came the inauguration of Washington, like the raising of the curtain upon a splendid *mise en scène*; and the impost bill was the first act of the momentous national drama. Would the people applaud, or would they drive the actors from the stage? In order to realize how anxious the situation was, we need to reconstitute in our minds the public sentiment of the time—the almost frenzied opposition to authority, that had sprung from the successful contest against King and Parliament; the local jealousies and the devotion to local interests engendered by the lack of a central government taking a broad view of national affairs and possessed of authority to adopt fearlessly the measures demanded by the general welfare; and the attachment to and reliance upon the State governments in resisting encroachments upon local rights. Now, the supreme attribute of sovereignty, the power to tax, which some of the States had refused to Congress altogether and the rest had granted grudgingly and conditionally, was placed in the hands of a bare majority of Congress. And Congress had boldly exercised the right so conferred upon it by passing an act levying duties upon the importation of foreign goods—an act based upon an assumption that the new government was to endure, and framed upon a broad policy which looked far beyond the mere question of revenue. It had ventured to do this in the face of solemn warnings that the act, in some of its

features, would be oppressive to whole sections of the country, in disregard of threats that the act should lead to a dissolution of the Union.

The situation fortunately had other features far more propitious. The discontent manifested itself chiefly in the remote regions of the South and West. The communities which feared oppression were scattered thinly over large areas, and their political power was not great, even if it could be concentrated. Moreover, the few duties that really affected them were paid by the importers, and they felt the taxes only in a somewhat indefinite rise in prices. In the more populous regions along the northern coast, on the other hand, men were well disposed toward the Constitution, as indeed were most of the broad-minded men everywhere. The leaders of opinion represented the act not as a hazardous surrender of local rights, but as an emancipation of the country from commercial thralldom to England. That was the true view to take of it; for the successful laying of an impost, uniform throughout the land, expressly designed as it was to challenge England's boast that she could retain commercial supremacy after the political sovereignty over the colonies had been wrested from her, gave the American people a new sense of freedom, reduced the arrogance of Great Britain, and raised the young republic in the estimation of all the governments of Europe.

The test of popular sentiment was gloriously successful. Instead of exciting opposition, the revenue act dispelled it. Men of anti-Federal opinions as well as the friends of the Constitution united in praising it and its beneficial effects. For a time the only marked difference between Federal and anti-Federal newspapers was that the one spoke of the President as "His Highness," or "His Excellency," whereas the other abhorred and abjured titles. Both were in favor of the revenue law, and were resolved that it should be obeyed and that it should be productive. The

spirit that prevailed is well shown in a letter dated at Philadelphia, on September 16, two months after the law went into operation.¹ It asserted that the merchants and traders of Philadelphia had "universally signed" a pledge that they would not directly or indirectly violate or evade the provisions of the law, but would "discharge from their employment any master, mate, or pilot of any vessel they owned whom they should discover to have engaged in contraband trade or who had aided or abetted others in so doing." References to the working of the law are rare in the publications of the period, but the absence of criticism is of itself a sufficient proof that the measure was not unpopular. The Union was to pass through many perils, but it was to be more than forty years before objection to the exercise of the power to levy an impost was to threaten its stability.

In concluding our consideration of the tariff act of 1789, it is necessary to take notice of, and if possible to decide, the controversy that has arisen in comparatively recent years as to the character of the act. A reference to this controversy has been made already.² It has usually been taken by protectionists as too plain for argument that a measure which, in its preamble, avowed that one of its objects was "the encouragement and protection of manufactures," was intended to effect that object. Those who oppose the system of protection have been divided in opinion on the subject. It would be useful, but not essential, to their position to demonstrate that the words of the act just quoted have not the signification attached to them in our time; because, while it makes little difference in the discussion of the question of protection and free trade as one of political economy, they stand at a disadvantage in disputing the constitutionality of protective legislation if it appears that the second public act signed by President Washington, passed by a Congress in which sat many

¹ Massachusetts "Spy," October 1, 1789.

² p. 40.

men who had helped to frame the Constitution, was truly an act of protective legislation, and was passed without the expression of the slightest doubt as to the power to levy duties for such a purpose.

The differences between writers on this subject are shown below.¹ It will be seen that the reasons for

¹ "That the encouragement of manufactures was an object of the power to regulate trade is proved by the use made of the power for that object in the first session of the first Congress under the Constitution." Madison: Cabell Letters.

"The protection of American industries was not ignored, as the history of the proceedings of Congress clearly shows. The subject, however, did not assume such importance in the debates of that body as it has subsequently acquired. One reason was because public sentiment was so strongly united. . . . There is no question whatever that in the earlier history of the Republic the tide of public opinion set more strongly in the direction of governmental protection than it does to-day." Bolles: "Financial History of the United States," vol. ii. p. 78.

"Thus, in the first revenue bill, which became the basis of subsequent tariff acts, the principle of legislative protection to American industry was recognized." Bishop: "History of American Manufactures," vol. ii. p. 16.

"Thus, in the very beginning of United States tariff legislation protection found the place which it has maintained, with little interruption, till the present day." Hill: "First Stages of the Tariff Policy," p. 112.

"The tariff of 1789 avowedly adopted the principle of protection." W. G. Sumner: "Protection in the United States," p. 24.

"The tariff of 1789, which foreshadowed the policy of a hundred years to come." . . . Elliott: "Tariff Controversy," p. 68.

"The bill was finally completed, and adopted as a protective measure, but it was so only in name. . . . Such was the first tariff bill, and such was the entering wedge of the protective system." Worthington C. Ford: article "Tariffs of the United States," in Lalor's Cyclopædia.

"Let the idea be forever discarded as unworthy of reliance, that the act of 1789 was, in the remotest degree, designed for the protection of manufactures. It could not possibly so have been if the application of means to an end was a branch of knowledge possessed by those who framed it." Condé Raguet: "Principles of Free Trade," p. 9.

Professor H. C. Adams, in his "Taxation in the United States, 1789-1816," makes the strongest presentation we have seen of the theory that the act neither was nor was designed to be in a true sense a protective measure. He maintains that the motive of the apparent sentiment in favor of manufactures was rather political than industrial, that it "is found in the determination of the American people to be independent of

regarding the act as a protectionist measure are stated by no one of the writers quoted, nor, so far as a careful search of authorities reveals, by any other writer. It may be suggested that they one and all deemed the declaration in the preamble of the act sufficient to determine its character. But since another view of the matter has been taken and is persistently held, it is necessary to examine the basis on which that view rests. The question is one of fact, and it has such an important bearing upon the whole tariff discussion, so far as it is political rather than economical, that we must endeavor to ascertain the truth.

Raguet's denial of the protective character of the act is clearly not based upon a study of the history of the act. It is a statement which, in its extreme form, will certainly be accepted by no one who has read the summary given in this chapter. Professor Adams's attitude is ingenious and plausible; but when it is fairly analyzed it will be seen that he practically makes a novel explanation of a fact appear to the casual reader as a denial of the fact itself. Let us take the two writers in turn.

The point made by Mr. Raguet implies that the act of 1789 could not have been designed as a measure protective of manufactures because the rates were manifestly and absurdly too low to accomplish the purpose; because

England" (p. 26); that the conscious formation of a protective system, except as a subordinate part of a political purpose, can be found only in a period much later than 1789 (p. 28); and that "the phrase 'encouragement and protection of manufactures' in the preamble is the price paid for substantial harmony in presenting this first revenue act to the country, — a compromise the more readily acceded to because protection was then regarded by all as but an incident to the securing of revenue, and, contrary to the wish of the protectionist advocates, the law was declared a temporary measure" (p. 30).

"It has often been said that the first tariff act, that of 1789, was a protective measure, and that in the debate on it the tariff controversy appeared full grown. But such considerations had little to do with the act." F. W. Taussig: "The Tariff History of the United States," p. 14. Professor Taussig also adopts, cautiously, the view of Professor Adams, just cited.

in after times much higher duties were required to effect full protection; because the act did not in effect protect American manufactures from foreign competition. These reasons are not expressed, but since they all may be deduced from his words they must be weighed carefully. It is true that the average of duties imposed by the act was extremely low, and that not a single article was charged with a duty that can be characterized as high, measured by any standard.¹ But we must bear it constantly in mind that the First Congress of the United States had nothing to guide it in fixing rates. It had no trustworthy estimate of the amount of revenue needed, no statistics of the amount of goods imported into the country, no experience as to the ability and willingness of the people to bear taxation, no knowledge as to the point where a duty would cease to become productive of revenue and begin to discourage importation. Consequently, were it true that the duty on no article was adequate to protect its manufacture at home, that fact would nevertheless give no ground whatever for an inference against the intention of Congress to protect it. The suggestion of Mr. Ragnet that the act could not have been intended as a protective measure "if the application of means to an end was a branch of knowledge possessed by those who framed it," is to be answered by saying that in fact they were not possessed of that knowledge. They did not know how much protection was needed, nor how effective the rates of duty would be. They were required to be extremely cautious,

¹ A superficial student of the case might be surprised that there was no mention in the act of any class of textiles, which have been more discussed in the last seventy-five years, in the formation of tariffs, than any other class of goods. They were all left among unenumerated merchandise, at five per cent. *ad valorem*. The explanation is simple. At that time the textile industry was exclusively a household industry. There was one cotton factory in Massachusetts, but it was devoid of power machinery; and one woollen factory in Hartford, Connecticut, from which Washington procured broadcloth for his second inauguration, but it was sold out by the sheriff before he retired from the presidency.

lest they should arouse popular opposition, and lest they should encourage smuggling. Both these evils would be promoted by high rates of duty. If we consider the conditions of the time, particularly the unguarded state of the coast and the frontier, it will be evident that the smuggler incurred little risk of detection and capture, and that the temptation offered by heavy duties would be great. Consequently, had Congress known that its rates were too low, it might nevertheless have felt that it was inexpedient to increase them.

Again, the circumstance that in later times higher duties have been needed in order to accomplish full protection does not prove conclusively that they were then too low for the purpose. Many elements that cause a part of the difference in cost between articles of foreign production and of domestic manufacture have been steadily decreasing in importance during a hundred years. Freight charges, the rate of interest, and the rate of exchange; the length of time necessary to make an importation; the freedom of commerce in respect of the restriction under penalty of higher duties to carriage in American ships; the danger from perils of the sea, and from pirates, privateers and the war vessels of belligerents; banking facilities, the abundance and economy in the use and transportation of ready money, and the perfection of the credit system; the extension of competition, and the economy of large transactions, — all these and other factors in the making of prices have varied, and almost without exception they have reduced the natural difference in cost — as distinguished from the difference caused by a customs duty — between foreign and domestic goods of the same class and quality. A mere recapitulation of them, which is all that is necessary at this time, will suggest that the person who, in 1789, purposed entering upon the manufacture of any article, enjoyed a large degree of natural protection which possibly called for but a small addition in the shape of a duty

on the foreign article to become effectual. It is further to be remarked that the argument that the low duties of the act of 1789 disprove the intention of Congress to protect manufactures, fails; because at the next session the same Congress raised these duties substantially. The act was admittedly an experiment in an untried field. When experience showed that the duties were too low for the purposes had in view, the obvious remedy was adopted. From these considerations it seems absolutely safe to take the position that the internal evidence of the act itself does not prove an absence of intention on the part of Congress to pass a protective act.

Professor Adams's theory is founded upon a better basis than that of Mr. Raguét, for it takes into account the actual circumstances of the time, was formed after a reading of the debates, and contains a measure of the truth — but not the whole truth. In his strong and clear treatise he has contrived, by magnifying the revenue and political objects of the act, to cause the protective object to disappear. No one denies or is disposed to deny that to provide for the support of government and for the payment of the national debt were the chief purposes of the act. They are named in that order in the preamble; and the encouragement and protection of manufactures stands third. When Mr. Fitzsimons moved his amendment to Mr. Madison's resolution, he did not ask the House of Representatives to abandon the idea of revenue and to pass an act for the encouragement of manufactures, but to consider both objects at once, — to aim at both, and not to place the incidental purpose first. Moreover, it is unquestionably true that many members — we might even admit that all of them — had constantly in mind the advantages of becoming industrially independent of England, possibly also the idea of revenge upon England for the commercial slights she had put upon us. Were these motives much more prominently urged than they

were in the debate upon the first tariff bill, we should not be compelled to believe that they were really the chief motives, so far as the senators and representatives were concerned. They would be the strongest in their appeal to the people, whose reception of the act was in doubt, and the advocates of the measure might well lay undue stress upon the anti-English operation of the measure. But an explanation of this sort is not necessary, since an assertion that the members were in favor of encouraging manufactures for political rather than industrial reasons¹ is not to declare that they were not in favor of protection, but that they were in favor of it. There has never been a time in the history of the country when the predominant motive to protection was found in a selfish wish of manufacturers that the government should increase their profits by laying heavy duties upon foreign goods. No doubt that motive has been present most of the time, no doubt it has been aggressive and occasionally offensive. Nevertheless the history of the tariff would have been radically different from what it is, if the protectionist party had not contained uninterruptedly a great many men who advocated the policy on the sole ground of national utility. The tariff of 1789 had the support of men like Mr. Madison, who theoretically rejected the principle of protection, but who felt that the government was virtually pledged, by the circumstances in which it had come into existence, to practise the principle; of men, as is suggested by Professor Adams, who regarded commercial and industrial independence as a necessary corollary to political freedom, and who desired to retaliate upon England; of men like Mr. Ames and Mr. Maclay, who urged that particular industries be fostered in order to promote the prosperity of their own communities. It does not appear that there was one member of either House of Congress who could

¹ See the argument on this point by Ugo Rabbeno, "The American Commercial Policy." Macmillan, 1895, pp. 118-126.

hope to profit pecuniarily by the imposition of a high duty. Mr. Fitzsimons himself, the originator of the policy which was adopted, seems, according to Mr. Maclay, to have been interested in the foreign trade, and should therefore have been opposed to a protective tariff. The thesis of Professor Adams, then, does not deny the protective intention of Congress, but only places the motives of those who passed it on a plane of high patriotism.

There is no way to divide the supporters of the act of 1789 into classes and to distinguish those who chiefly wished to retaliate upon England from those who thought the well-being of the country to be promoted by establishing manufactures. It is therefore pure assumption to assert that the first class outnumbered the second. So far as the debates are a guide to the opinions of those who favored the bill, protectionism played a large part and the political motive an extremely unimportant part in determining their votes. The consideration of national utility was most prominent in the discussion of the hemp and cordage duties, which were imposed notwithstanding the burdensome effect on shipbuilding because it was deemed important that the country should not be dependent upon a foreign supply that might be cut off in case of war. Even as to these duties the technical protection argument was not absent from the debate, — encouraging the establishment of an industry that did not exist, and fostering one already established, on the ground of the advantage to accrue to the communities interested. While there were probably other duties that were imposed for both of these reasons, it is difficult to discover anything but protection pure and simple in the duties on candles, steel, nails, loaf sugar, and coal, or in the arguments by which they were supported. The proposed duty of nine cents a bushel on malt, opposed as prohibitory of importation, and advocated because it would be prohibitory, was raised to ten cents. The duty of six cents a pound

on manufactured tobacco was so high that not an ounce could be imported. The duty on boots, fifty cents a pair, was not discussed at all, but it was unquestionably a protective rate.¹ The adjustment of the duties on spirits and molasses requires no further notice. It was a clear instance of victory by the advocates of protection. The duty on woollen and cotton cards was imposed solely to protect a manufacture already established.

It appears, then, that some important articles were taxed at a rate above the average; that with the exception of luxuries these articles were agricultural productions or manufactured goods which it was deemed desirable to have produced in the country, and that the list covered substantially all the articles which Americans could then hope to produce in competition with Europe; and that in nearly every case the rate asked for by the advocates of the duty was conceded. Nothing more or stronger can be said of any protective tariff since the first.

Professor Adams suggests that the phrase in the preamble, so often quoted, was "the price paid for substantial harmony in presenting this first revenue act to the country." But neither he nor any person now living could know the origin of the phrase; and the act was not passed with any approach to harmony. After the first discussion of the tariff resolutions in Committee of the Whole, the House of Representatives referred the subject to a committee of three, of which Mr. Clymer, of Pennsylvania, was chairman, to draft a bill in conformity with the resolutions. That committee reported a bill with the identical title of the act as it finally passed, and there is no hint either in the "Annals of Congress" or in the Jour-

¹ "The First Congress, which met in 1789, having the counsel of Roger Sherman, of Connecticut, who represented the shoemakers in that body, and of several influential friends of manufactures in Philadelphia, so adjusted the tariff in reference to the shoe and leather manufactures as to enable these branches within a few years to attain a prosperous footing." Bishop: "History of American Manufactures," vol. i. p. 463.

nal of the House of Representatives that any amendment was offered to the preamble. We may therefore assume, in the absence of a particle of evidence to the contrary, that the preamble was written and tacitly agreed to before any but the most general discussion had taken place, and that highly protectionist in tone. It is something like a perversion of history to represent that there was substantial unanimity in Congress upon the act, or that it embodied a "compromise." The opposition was numerically small but determined, in the House of Representatives; in the Senate the division was close, as the quotations from Mr. Maclay's "Journal" show, in many cases so close that the casting vote of the Vice-President decided the matter; and Maclay had to fight hard, but he fought successfully, for the "protecting duties." There was opposition to some of the distinctive features of the measure to the last moment, and the bill went back and forth between the two branches more than once before an agreement could be reached. There is nothing to show that at any stage of the controversy the phraseology of the preamble was even mentioned.

Upon a careful consideration of the whole question — and it is believed that everything essential to a correct decision has been candidly presented in the narrative sketch of the deliberations of Congress on the act — it seems impossible to come to any other conclusion than that the purposes of Congress were accurately stated in the preamble. The act was a protective measure in the same sense as the acts of 1824 and of 1890 were protective measures. And the members of the First Congress went as far in the direction of protection as, in their inexperience, they dared to go.

IV

THE INFLUENCE OF HAMILTON

THE Tariff Act of July 4, 1789, was an experimental measure. By its own terms it was to continue in operation until June 1, 1796, a period of seven years. Yet there is abundant evidence that it was not expected to remain in force so long. The debates in the House of Representatives show conclusively that the popular branch of Congress intended to reserve the right to propose any change in the law which might seem necessary.¹ The necessity of amendment became evident when the act had been in force five months only; and the act of 1789 was superseded by that of August 10, 1790, which came into operation on the 1st of December in that year.

To base any conclusions whatever upon statistics of importations under the original act, and of duties collected between August 1, 1789, and December 1, 1790, would be like drawing inferences from the first hour's running of a newly invented and crudely constructed machine. For example, an argument against the protective character of the act of 1789 founded upon the statement that the average of duties under it was but eight and a half per cent., is clearly without value; since it is necessary to assume, or to prove, that Congress intended to make that

¹ "For want of a proper knowledge of the true situation of our affairs," said Mr. Fitzsimons, "we are unable to determine how far the present provision is equal to the necessities of the Union." ("Annals of Congress," vol. i. p. 358.) It was "a system of experiment and ought to be temporary," according to Mr. Lee. Other speakers maintained that if the law did not yield enough revenue to meet the demands of the public debt, it should be amended.

the average rate, and no evidence on that point is obtainable. Furthermore, the statement itself is incapable of proof.¹ The statistical historian who enters upon this subject with an open mind, and who has not a thesis to be established, must content himself with the most general statements regarding the commerce of the country for many years after the government went into operation. The facts relating to the value of imports were not collected according to a method which makes practicable a comparison of the amount of commerce at different times; and for a long time after the usefulness of such statistics began to be perceived, the work of collecting them was performed in a manner so incomplete and unsatisfactory as to reduce greatly the trustworthiness of deductions from them.

An attempt has been made to repair the deficiencies of the early returns of commerce; and we may suppose that the investigations of the Treasury Bureau of Statistics have produced a result not far from the truth. The value of goods charged with *ad valorem* duties was necessarily returned by importers and is stated in the official returns;² but the goods on which specific duties were levied were entered by quantity. In order, therefore, to arrive at the total value of importations, the current price of each article — molasses, wine, cordage, nails, boots, salt, and the rest — must be ascertained, and the gross value of the

¹ The system of giving credit for duties would alone vitiate all calculations as to the average rate of duties under the act. Much of the revenue accruing to the government under the act of 1789 was not collected until after the second act had come into operation.

² The value of goods paying *ad valorem* duties in the fiscal year ended September 30, 1790, was \$15,388,403; at 5 per cent., \$13,788,510; at 7½ per cent., \$960,138; at 10 per cent., \$644,326; at 15 per cent., \$5429; total duties at these rates, \$826,182.80, — a little more than 5½ per cent. No attempt seems to have been made to ascertain the value of goods charged with specific duties imported during the fiscal year 1789-90. The earliest returns of the Bureau of Statistics are for 1791, during ten months of which fiscal year the law of 1790 was in operation.

quantity imported added to the value of merchandise entered at its value. For reasons already given, the exact facts, could they be obtained, would possess little importance. They would disclose neither the intention of Congress as to the amount of revenue to be raised, nor the rate of duty that might in its opinion be reasonably laid upon merchandise imported and that would be borne willingly by the people.

Alexander Hamilton was appointed Secretary of the Treasury on September 11, 1789. At the beginning of the second session of the First Congress, in January, 1790, he submitted an estimate of \$600,000 for the expenses of government, and of \$2,239,163 for interest on the domestic and foreign debt. A sufficient revenue for both these purposes, he thought, could be obtained from the existing duties, with an increase of the rates upon wines, spirits, tea, and coffee, and an excise upon domestic spirits. The House of Representatives, in Committee of the Whole, on April 27, 1790, adopted resolutions in favor of duties on foreign spirits, ranging from twenty to forty cents per gallon, according to proof; and an excise on domestic spirits ranging from nine to twenty-five cents a gallon. The bill based on these resolutions was debated at length. There was great opposition to the excise system. Two ineffectual attempts were made to strike out the excise features of the bill; and at last, on May 11, a vote was passed which was equivalent to a rejection of the whole bill.

Since it was necessary to make provision for the revenue which the House would not raise by means of an excise, a committee was appointed on June 21 to devise a plan for paying the interest on the debt. Mr. Fitzsimons was chairman of the committee, Mr. Madison was the second member; his patriotism had overcome his often-expressed repugnance to an excise, and he had voted for the defeated bill. The committee consisted of three supporters

and two opponents of the excise. Its report was made on June 29. On the 2d of July the House of Representatives, in Committee of the Whole, agreed to resolutions in favor of a general increase, by one half, of the duties on all specified articles, and a still larger augmentation of the duties on imported wines, spirits, tea, coffee, and spices. A bill was reported (July 13), briefly debated, and passed on July 19. The Senate passed the bill on August 5, having made but a few amendments, all of which were accepted by the House; and the act was approved on August 10.

This brief account of its legislative history shows that it was distinctively and exclusively a revenue measure, and that it was passed in haste to meet an emergency. Fifty days only elapsed from the time the committee was appointed to consider the matter until the act received the approval of President Washington; a period extremely short in those days of unlimited debate and clumsy parliamentary procedure. The preamble of the act recites the objects of the previous law, including "the encouragement of manufactures," and those of the amended law, which do not include manufactures. Nevertheless, one may see from an indication here and there that the occasion was not neglected to befriend some manufactures which were not sufficiently protected by the act of 1789. The duty on hemp was reduced 10 per cent., from 60 cents to 54 cents per hundredweight; that upon tarred cordage was increased from 75 cents to \$1; on untarred from 90 cents to \$1.50; all of which changes were in favor of the rope-makers. The duty on steel was raised from 56 to 75 cents per hundredweight. Many articles were taken out of the unenumerated class, at 5 per cent., and charged $7\frac{1}{2}$ or 10 per cent. duty; the higher rate was imposed on manufactured articles. An important section of this act made the law permanent until the public debt should be paid, thus repealing the limitation of time contained in the act of 1789.

Even this measure was a mere makeshift, rendered necessary, as we have seen, by the failure of the excise bill. At the third and final session of the First Congress the excise was again brought forward, and although still stoutly opposed, was passed, and approved March 3, 1791. This law was substantially that which had been rejected a year before. It dealt with distilled spirits only. A duty graduated according to proof was laid on imported spirits, ranging from 20 to 40 cents per gallon; an excise from 9 to 20 cents per gallon was laid on spirits distilled in the United States. In 1792 the excise features alone were dealt with in a separate bill, amending and extending the system. This law, which gave rise to the famous Whiskey Insurrection, and which incidentally showed to the people of the United States that they had established a government capable of enforcing its own enactments, remained on the statute book for ten years. In 1802, upon the advice of President Jefferson, the whole excise system was repealed. Neither the act nor the social disturbances to which it gave rise come within the proper scope of this work.

President Washington, in his first annual address, used the following language:—

A free people ought not only to be armed but disciplined; to which end a uniform and well-digested plan is requisite; and their safety and interest require that they should promote such manufactories as tend to render them independent of others for essential, particularly military, supplies.

In a later paragraph he said: "The advancement of agriculture, commerce, and manufactures, by all proper means will not, I trust, need recommendation." One week after the delivery of the address, on January 15, 1790, the House of Representatives adopted the following order:—

Ordered, That it be referred to the Secretary of the Treasury to prepare and report to this House a proper

plan or plans conformably to the recommendation of the President of the United States in his speech to both houses of Congress, for the encouragement and promotion of such manufactories as will tend to render the United States independent of other nations for essential, particularly for military, supplies.

In conformity to this instruction Alexander Hamilton prepared his great "Report on Manufactures," and communicated it to the House of Representatives at the beginning of the first session of the Second Congress, December 5, 1791. The report is deservedly ranked among the ablest of the state papers of that distinguished statesman, whose ideas upon the constitution of the government have gradually and insensibly, but at last completely, prevailed. The lineal political descendants of those who rejected his theories, as involving a complete perversion of the principles that underlie the Constitution, have become more Hamiltonian than was Hamilton himself. It becomes a duty to summarize this monumental treatise, because it covers almost the whole range of the tariff discussion on the protection side of the controversy from that time to the present. The task is one which presents difficulties that amount to a dilemma: to rewrite his argument in briefer form is not merely to replace his language with words less felicitously chosen, but to incur the risk of conveying more or less than his own sentences imply; to condense it by omitting passages and clauses is to rob his argument of much of its cogency. It is hoped that a combination of the two objectionable methods will not introduce the evils and exclude the advantages of both. In that case, and in any event, the remedy is a careful reading of the whole Report.

After reciting the commission given to him by the House of Representatives, the Secretary says:—

The expediency of encouraging manufactures in the United States, which was not long since deemed very

questionable, appears at this time to be pretty generally admitted. The embarrassments which have obstructed the progress of our external trade have led to serious reflections on the necessity of enlarging the sphere of our domestic commerce. The restrictive regulations which, in foreign markets, abridge the vent of the increasing surplus of our agricultural produce, serve to beget an earnest desire that a more extensive demand for that surplus may be created at home ; and the complete success which has attended manufacturing enterprise in some valuable branches, conspiring with the promising symptoms which attend some less mature essays in others, justify a hope that the obstacles to the growth of this species of industry are less formidable than they were apprehended to be, and that it is not difficult to find in its further extension a full indemnification for any external disadvantages which are or may be experienced, as well as an accession of resources favorable to national independence and safety.

He proceeds to consider the general objection to the policy of encouraging manufactures : that agriculture is the most beneficial and productive object of human industry, and that this principle applies especially to the United States, with its vast tracts of fertile but unimproved territory ; that encouragement of manufactures by government is to endeavor to transfer the natural current of industry from a more to a less beneficial channel — a policy necessarily unwise, because private interest will guide people to the most profitable employment, which in turn will most effectually promote public prosperity ; that this is particularly the case with the United States, since various causes conspire and must continue to occasion a scarcity and dearness of labor, and a deficiency of capital increases the improbability of successful competition with Europe ; that the policy sacrifices the interests of the community to those of particular classes, gives a monopoly to those engaged in the encouraged manufactures, and causes an advance in prices to the detriment of other parts of society.

This mode of reasoning is founded upon facts and principles which have certainly respectable pretensions. If it had governed the conduct of nations more generally than it has done, there is room to suppose that it might have carried them faster to prosperity and greatness than they have attained by the pursuit of maxims too widely opposite. Most general theories, however, admit of numerous exceptions, and there are few if any of the political kind which do not blend a considerable portion of error with the truths they inculcate.

Hamilton now takes up in order the points of objection enumerated above. While conceding that agriculture has a strong claim to preëminence over every other kind of industry, he contends against the idea that it "has a title to anything like an exclusive predilection in any country," does not think it proved that it is even more productive than every other branch of industry, and rejects altogether the theory that it is the only productive form of industry. These several points are argued at length; but since the theories he is here combating played but a brief part in the discussion of tariff questions, his argument need not be presented even in outline. At the conclusion of his reasoning intended to show how the labor of the artificer and the labor of the farmer supplement each that of the other, and render the other more efficient and productive, he goes on to a particular examination of the reasons for thinking that "manufacturing establishments not only occasion a positive augmentation of the produce and revenue of the society, but that they contribute essentially to rendering them greater than they could possibly be without such establishments."

It implies a division of labor. The separation of occupations causes each to be carried to greater perfection, from the greater skill and dexterity naturally resulting from constant application to one object, and from the economy of time effected by avoiding the loss of it incident to a frequent transition from one operation to

another. There is an extension of the use of machinery, which increases the effectiveness of man's labor, and which is much more applicable to manufactures than to agriculture. Moreover, the fabrication of machines becomes a distinct trade, in many cases, and thus increases the diversification of labor. "The substitution of foreign for domestic manufactures is a transfer to foreign nations of the advantages accruing from the employment of machinery. The cotton-mill, invented in England within the last twenty years, is a signal illustration of the general proposition which has just been advanced. In consequence of it, all the different processes for spinning cotton are performed by means of machines which are put in motion by water, and attended chiefly by woman and children — and by a smaller number of people in the whole, than are requisite in the ordinary mode of spinning. And it is an advantage of great moment that the operations of this mill continue with convenience during the night as well as through the day. The prodigious effect of such a machine is easily conceived. To this invention is to be attributed essentially, the immense progress which has been so suddenly made in Great Britain in the various fabrics of cotton."

Manufactures also "afford occasional and extra employment to industrious individuals and families who are willing to devote the leisure resulting from the intermissions of their ordinary pursuits to collateral labors." They also give occupation to persons who would otherwise be idle, and in many cases a burden on the community, from some cause indisposing or disqualifying them for the toils of the country.

The policy proposed would further promote the emigration to the country of manufacturers attracted by the inducements of a better price for their fabrics or their labor, of cheaper provisions and raw materials, of exemption from many of the taxes, burdens, and restraints of the Old World, of greater civil and religious liberty. This

would result in an increase of the population and of productive labor, and at the same time in an avoidance of the evil of diverting hands from the pursuit of agriculture. While furnishing greater scope for the diversity of talents and dispositions which discriminate men from each other, it would afford a more ample and various field for enterprise. Among the most important of its effects, it would create in some instances a new, and secure in all a more certain and steady, demand for the surplus produce of the soil, and would thus have an immediate and direct relation to the prosperity of agriculture. "It is evident that the exertions of the husbandman will be steady or fluctuating, vigorous or feeble, in proportion to the steadiness or fluctuation, adequateness or inadequateness, of the markets on which he must depend for the vent of the surplus which may be produced by his labor; and that such surplus, in the ordinary course of things, will be greater or less in the same proportion. For the purpose of this vent a domestic market is greatly to be preferred to a foreign one; because it is in the nature of things far more to be relied upon."

All nations endeavor to supply themselves with subsistence from their own soil; manufacturing nations endeavor to procure their raw materials from the same source. This disposition, urged by the spirit of monopoly, is sometimes carried even to an injudicious extreme. Nations destitute of mines and manufactures must obtain manufactured articles by an exchange of the products of their soils; and if manufacturing countries are unwilling to allow the exchange to be made, agricultural nations must make every possible effort to manufacture for themselves. Thus "the manufacturing nations abridge the natural advantages of their situation through an unwillingness to permit the agricultural countries to enjoy the advantages of theirs, and sacrifice the interests of a mutually beneficial intercourse to the vain project of selling everything and buying nothing."

✓ It is a further consequence of the policy that the foreign demand for the products of agricultural countries is rather casual and occasional than certain or constant. There are natural causes, independent of the artificial impediments, which tend to render the external demand for the surplus of agricultural nations a precarious reliance. A ✓ deficient or a plentiful harvest in the manufacturing countries would make a great difference in the degrees of their necessity for a foreign supply. The rapid extension of ✓ settlement in the United States and the tendency of the system which prevails among most of the commercial nations of Europe furnish strong reasons to regard the foreign demand for the agricultural surplus of the United States as too uncertain a reliance, and to desire a substitute for it in an extensive domestic market.

✓ To secure such a market, there is no other expedient than to promote manufacturing establishments. . . . This idea of an extensive domestic market for the surplus produce of the soil is of the first consequence. It is of all things that which most effectually conduces to a flourishing state of agriculture. If the effect of manufactories should be to detach a portion of the hands which would otherwise be engaged in tillage, it might possibly cause a smaller quantity of lands to be under cultivation; but by ✓ their tendency to procure a more certain demand for the surplus produce of the soil they would at the same time cause the lands which were in cultivation to be better improved and more productive. And while by their influence the condition of each individual farmer would be ✓ meliorated, the total mass of agricultural production would probably be increased. For this must evidently depend as much upon the degree of improvement, if not more, than upon the number of acres under culture.

✓ The multiplication of manufactories not only furnishes a market for those articles which have been accustomed to be produced in abundance in a country, but it likewise creates a demand for such as were either unknown or produced in inconsiderable quantities. The bowels as well

as the surface of the earth are ransacked for articles which were before neglected.

The Secretary next considers the objection that while the encouragement of manufactures might be advantageous to a country secluded from foreign commerce, it may not be so for a state possessed of vacant and fertile territory which has ample opportunity to procure from abroad on good terms all the fabrics of which it stands in need. He concedes that these circumstances secure a division of labor, for the farmer is left free to pursue exclusively the culture of his land, and is enabled to procure with its surplus the manufactured articles which he needs. And although a diversification of industry is greatly desirable in a settled country, there is nothing of so solid and permanent advantage to an uncultivated and unpeopled country as to convert its wastes into cultivated and inhabited districts. To this he replies that the argument would have great force if the system of perfect liberty to industry and commerce were the prevailing system of nations. It would constitute a diversification of industry throughout the world. Although it is probable that a nation merely agricultural would not enjoy the same degree of opulence with those which had manufactures also, yet the progressive improvement of the lands in the agricultural country might in the end atone for an inferior degree of opulence in the mean time. But since other nations do not leave commerce free, the United States are in the situation of a country precluded from foreign commerce. They can procure from abroad the manufactured goods which they need; they find impediments to the emission and vent of their own commodities. If, therefore, they do not manufacture for themselves, a constant and increasing necessity for the commodities of Europe, and a partial and occasional demand for their own, would expose them to impoverishment. ✓

He makes these remarks, he explains, not in a spirit of complaint; for other nations must judge whether by aiming at too much they do not lose more than they gain. It is for the United States to consider by what means they can render themselves least dependent on the combinations, right or wrong, of foreign policy. If Europe will not take from us the products of our soil upon terms consistent with our interest, the natural remedy is to contract as fast as possible our wants of her.

The next proposition of those who object to the encouragement of manufactures is that industry if left to itself will naturally find its way to the most useful and profitable employment, and hence that without government aid manufactures will grow up as fast as the interest of the community may require. Several considerations are offered in opposition to this idea: that habit leads men to continue doing what they have done, and doing it in the old way, in preference to adopting new occupations and improved methods. This is likely to be the case while a bare support can be insured by an adherence to ancient courses, though a resort to a more profitable employment might be practicable. A second reason is that the apprehension of failure in new enterprises would deter cautious and prudent men from taking up with them. A still more formidable obstacle is the superiority enjoyed by nations which have preoccupied and perfected a branch of industry. The greatest obstacle of all consists in the bounties, premiums, and other aids which are granted in a variety of cases by the nations in which the establishments to be imitated are previously introduced. Furthermore combinations by those engaged in a particular branch of industry have been known to be formed to frustrate by temporary sacrifices the first efforts to introduce it in another country.

Whatever room there may be for an expectation that

the industry of a people, under the direction of private interest, will, upon equal terms, find out the most beneficial employment for itself, there is none for a reliance that it will struggle against the force of unequal terms, or will of itself surmount all the adventitious barriers to a successful competition which may have been erected either by the advantages naturally acquired from practice and previous possession of the ground or by those which may have sprung from positive regulation and an artificial policy.

Dealing next with a group of objections, — that a scarcity of hands for the prosecution of manufactures, the dearness of labor, and a lack of free capital render the success of the policy doubtful, — Hamilton admits that the first two are real; but he maintains that there are circumstances which lessen their force and lead to a belief that they are not sufficient to prevent the establishment of many manufactures. As for the scarcity of hands, there are some parts of the country so well settled that the assertion is not true of them. These districts have fewer attractions to agriculture than some parts of the Union, and exhibit a proportionably stronger tendency toward other branches of industry. Moreover the possibility of employing women and children, and men in the intervals of other occupations, and the probability of the immigration of foreign artisans, are to be considered. The dearness of labor, with respect to which he thinks the disparity between some of the manufacturing parts of Europe and a large proportion of the United States is not nearly so great as is commonly imagined, will be mitigated by the same circumstances as those just mentioned in speaking of the scarcity of hands. So far as the higher price of labor is a consequence of large profits, this country can afford to pay higher wages. The prices of foreign fabrics in the United States is made up of the following ingredients: —

(a) The cost of materials, as to which the advantage

is at present in favor of the United States, and the difference in their favor must increase. Some of the manufacturing countries of Europe are much more dependent on foreign supply for the materials of their manufactures than would be the United States, who are capable of supplying themselves with a greater abundance as well as a greater variety of such materials.

(*b*) The expense of grounds, buildings, machinery, and tools. An equality of advantages is assumed.

(*c*) Wages. The higher cost of labor is conceded.

(*d*) Profits on capital. An item common to both countries.

(*e*) Commissions of agents; (*f*) expense of transportation to the United States; (*g*) taxes or duties, if any, on exportation; and (*h*) taxes or duties on importation. All these apply solely to foreign merchandise, and "cannot be estimated at less than from fifteen to thirty per cent. on the cost of it at the manufactory. This sum of extra charge may confidently be regarded as more than a counterpoise for the real difference in the price of labor, and is a satisfactory proof that manufactures may prosper in defiance of it, in the United States."

The supposed want of capital to be employed in manufactures is discussed at great length. The influence of manufactures in attracting foreign capital leads to a discussion of objections anticipated to the introduction of such capital. Hamilton also argues in detail as to the benefit of employing the public funds — by which term he means the public debt — as capital. Inasmuch as the bearing of this argument upon the general question is extremely slight, and since the financial principles maintained are wholly obsolete, this part of the paper may be passed over.

To all the arguments which are brought to evince the impracticability of success in manufacturing establishments in the United States, it might have been a sufficient

answer to have referred to the experience of what has been already done. It is certain that several important branches have grown up and flourished with a rapidity which surprises, affording an encouraging assurance of success in future attempts. Of these it may not be improper to enumerate the most considerable.

1. *Of Skins.* Tanned and tawed leather, dressed skins, shoes, boots and slippers, harness and saddlery of all kinds, portmanteaus and trunks, leather breeches, gloves, muffs and tippets, parchment and glue.

2. *Of Iron.* Bar and sheet iron, steel, nail rods and nails, implements of husbandry, stoves, pots and other household utensils, the steel and iron work of carriages, and for shipbuilding, anchors, scale-beams and weights, and various tools of artificers, arms of different kinds; though the manufacture of these last has of late diminished for want of demand.

3. *Of Wood.* Ships, cabinet wares, and turnery, wool and cotton cards, and other machinery for manufactures and husbandry, mathematical instruments, coopers' wares of every kind.

4. *Of Flax and Hemp.* Cables, sail cloth, cordage, twine and pack thread.

5. Bricks and coarse tiles and potters' wares.

6. Ardent spirits and malt liquors.

7. Writing and printing papers, wrapping and sheathing papers, pasteboard, fullers' or press papers, paper hangings.

8. Hats of fur and wool, and mixtures of both; women's stuff and silk shoes.

9. Refined sugars.

10. Oils of animals and seeds, soap, spermaceti and tallow candles.

11. Copper and brass wires, particularly utensils for distillers, sugar refiners and brewers; andirons and other articles for household use, philosophical apparatus.

12. Tin wares for most purposes of ordinary use.

13. Carriages of all kinds.

14. Snuff, chewing and smoking tobacco.

15. Starch and hair powder.

16. Lampblack, and other painters' colors.

17. Gunpowder.

Besides manufactories of these articles which are carried on as regular trades, and have attained to a considerable degree of maturity, there is a vast scene of household manufacturing which contributes more largely to the supply of the community than could be imagined without having made it an object of particular inquiry. This observation is the pleasing result of the investigation to which the subject of this report has led,¹ and is applicable as well to the Southern as to the Middle and Northern States. Great quantities of coarse cloths, coatings, serges, and flannels, linsey woolseys, hosiery of wool, cotton, and thread, coarse fustians, jeans, and muslins, checked and striped cotton and linen goods, bed-ticks, coverlets and counterpanes, tow linens, coarse shirtings, sheetings, towelling and table linen, and various mixtures of wool and cotton, and of cotton and flax, are made in the household way, and in many instances to an extent not only sufficient for the supply of the families in which they are made, but for sale, and even in some cases for exportation. It is computed in a number of districts that two thirds, three fourths, and even four fifths of all the clothing of the inhabitants are made by themselves. The importance of so great a progress as appears to have been made in family manufactures within a few years, both in a moral and political view, renders the fact highly interesting.

The last objection of the list enumerated at the beginning of the paper remains to be noticed: that government encouragement of manufactures tends to give a monopoly of advantages to particular classes at the expense of the rest of the community, who are compelled by every measure which obstructs the free competition of foreign commodities to pay an enhanced price for whatever they want. While the tendency of such measures is admitted to be in

¹ His correspondence, preparatory to the framing of this Report, shows the immense labor, the variety and extent of his researches, and the minute personal investigation which he bestowed upon the details of the subject. ("History of the Republic," by John C. Hamilton, vol. iv. p. 299.) A series of extensive investigations conducted by every feasible kind of inquiry and research, both in foreign parts and in the United States, furnished the material for his reflections. (Morse's "Life of Hamilton," vol. i. p. 358.)

the direction alleged, yet the fact does not uniformly correspond with the theory.

But though it were true that the immediate and certain effect of regulations controlling the competition of foreign with domestic fabrics was an increase of price, it is universally true that the contrary is the ultimate effect with every successful manufacture. When a domestic manufacture has attained to perfection and has engaged in the prosecution of it a competent number of persons, it invariably becomes cheaper. Being free from the heavy charges which attend the importation of foreign commodities it can be afforded, and accordingly seldom or never fails to be sold, cheaper in process of time than was the foreign article for which it is a substitute. The internal competition which takes place soon does away with everything like monopoly, and by degrees reduces the price of the article to the minimum of a reasonable profit on the capital employed. This accords with the reason of the thing and with experience. . . . In a national view a temporary enhancement of price must always be well compensated by a permanent reduction of it.

This diminution of the prices of manufactured articles has a direct and very important tendency to benefit agriculture. It enables the farmer to procure with a smaller amount of his labor the manufactured produce of which he stands in need, and consequently increases the value of his income and property.

Hamilton now turns his attention to the affirmative side of the argument, and adduces some positive reasons heretofore mentioned only incidentally for recommending manufactures to the patronage of the government. He asserts a moral certainty that the trade of a country which is both manufacturing and agricultural will be more lucrative and prosperous than that of a country which is merely agricultural. The first reason for this is a repetition of the argument that since all countries endeavor to supply articles of prime necessity from their own soil, the foreign market of those countries which raise a surplus of agri-

cultural produce is precarious. The second consideration is the attraction which a more diversified market offers to foreign customers. The greatest resort will ever be to those marts where commodities while equally abundant are more various. More important than either of these reasons is the consideration that the nation which can bring to market only a few articles is more likely than one with diversified products to be quickly and sensibly affected by the stagnation of demand for certain commodities which at some time or other interferes more or less with the sale of all. The evidences of greater prosperity for manufacturing countries which the Secretary mentions as likely to appear, are a favorable balance of trade and a greater supply of pecuniary wealth, or money.

Not only the wealth, but the independence and security of a country, appear to be materially connected with the prosperity of manufactures. Every nation, with a view to those great objects, ought to endeavor to possess within itself all the essentials of national supply. These comprise the means of subsistence, habitation, clothing, and defence. The possession of these is necessary to the perfection of the body politic, to the safety as well as to the welfare of society. The want of either is the want of an important organ of political life and motion; and in the various crises which await a state it must severely feel the effects of any such deficiency. The extreme embarrassments of the United States during the late war from an incapacity of supplying themselves are still a matter of keen recollection.

The conditions of the exchange of products with Europe furnish another reason for establishing manufactures. The bulkiness of the commodities which America now produces causes heavy charges on their transportation to distant markets, which charges, in view of the fact that these goods come in competition with a domestic supply, fall chiefly upon the United States. On the other hand, the charges upon the transportation of manufactured

goods, which meet with no competition in this country, fall upon the consumer. Both these items form an "extraordinary deduction from the primitive value of our own products; these being the materials of exchange for the foreign products which we consume."

It is not uncommon to meet with an opinion that though the promoting of manufactures may be the interest of a part of the Union, it is contrary to that of another part. The Northern and Southern regions are sometimes represented as having adverse interests in this respect. Those are called manufacturing, these agricultural States; and a species of opposition is imagined to subsist between the manufacturing and agricultural interests.

This idea of a contrariety of interests between the two parts of the country Hamilton characterizes as, "in the main, as unfounded as it is mischievous. The diversity of circumstances, on which such contrariety is usually predicated, authorizes a directly contrary conclusion. Mutual wants constitute one of the strongest links of political connection. . . . Everything tending to establish substantial and permanent order in the affairs of a country, to increase the total mass of industry and opulence, is ultimately beneficial to every part of it." But it is particularly to be borne in mind that if the Northern and Middle States should be the principal scenes of manufacturing, "they would immediately benefit the more Southern by creating a demand for productions some of which they have in common with other States, and others which are either peculiar to them, or more abundant, or of better quality than elsewhere." He names many of these products, and at the conclusion of the list remarks that "the extensive cultivation of cotton can perhaps hardly be expected but from the previous establishment of manufactories of the article; and the surest encouragement and vent for the others would result from similar establishments in respect to them."

Having given some reasons for regarding the present as a highly favorable time for introducing the policy which he advocates, he turns to an examination of the various methods by which government may extend its aid to manufactures.

1. Protecting duties — or duties on those foreign articles which are the rivals of the domestic ones intended to be encouraged. Duties of this nature evidently amount to a virtual bounty on the domestic fabrics ; since by enhancing the charges on foreign articles they enable the national manufacturers to undersell all their foreign competitors. The propriety of this species of encouragement need not be dwelt upon, as it is not only a clear result from the numerous topics which have been suggested, but is sanctioned by the laws of the United States in a variety of instances ; it has the additional recommendation of being a resource of revenue. Indeed, all the duties imposed on imported articles, though with an exclusive view to revenue, have the effect in contemplation and, except where they fall on raw materials, wear a beneficent aspect toward the manufacturers of the country.

2. Prohibitions of rival articles, or duties equivalent to prohibitions. This is another and an efficacious means of encouraging national manufacturers ; but in general it is only fit to be employed when a manufacture has made such progress and is in so many hands as to insure a due competition and an adequate supply on reasonable terms. Of duties equivalent to prohibitions there are examples in the laws of the United States ; and there are other cases to which the principle may be advantageously extended, but they are not numerous. Considering a monopoly of the domestic market to its own manufacturers as the reigning policy of manufacturing nations, a similar policy on the part of the United States, in every proper instance, is dictated, it might almost be said, by the principles of distributive justice ; certainly by the duty of endeavoring to secure to their own citizens a reciprocity of advantages.

3. Prohibitions of the exportation of the materials of manufactures. As to this expedient he concludes that

"it ought not to be affirmed that it is in no instance proper; but is certainly one which ought to be adopted with great circumspection and only in very plain cases."

4. Pecuniary bounties. This has been found one of the most efficacious means of encouraging manufactures, and is in some views the best. His reasons for this opinion are (*a*) that it is more positive and direct in its operation than any other method; (*b*) that it avoids partially or altogether the inconvenience of a temporary augmentation of price; (*c*) that it has no tendency to produce scarcity; (*d*) it is sometimes not only the best but the only proper expedient for uniting the encouragement of a new object of agriculture with that of a new object of manufacture, — by means of a bounty on the raising of the material combined with a duty on the article manufactured from it. If the bounty be to the manufacturer on so much of the domestic material as he consumes, the operation is nearly the same; he has a motive of interest to prefer the domestic commodity, if of equal quality, even at a higher price than the foreign, so long as the difference of price is anything short of the bounty which is allowed upon the article.

Except the simple and ordinary kinds of household manufacture or those for which there are very commanding local advantages, pecuniary bounties are in most cases indispensable to the introduction of a new branch. A stimulus and a support not less powerful and direct is, generally speaking, essential to the overcoming of the obstacles which arise from the competition of superior skill and maturity elsewhere. Bounties are especially essential in regard to articles upon which those foreigners who have been accustomed to supply a country are in the practice of granting them.

The continuance of bounties on manufactures long established must almost always be of questionable policy, because a presumption would arise in every such case that there were natural and inherent impediments to success. But in new undertakings they are as justifiable as they are oftentimes necessary.

Hamilton notices two objections to granting bounties: the first, that it has an appearance of giving away the

✓ public money without an immediate consideration, — to which he replies that there is no purpose to which public money can be more beneficially applied than to the acquisition of a new and useful branch of industry; the second that bounties serve to enrich particular classes at the expense of the community, to which his answer is that ✓ the objection equally lies against other modes of encouragement which are admitted to be eligible. If a duty increases the price of an article, "it causes an extra expense to the community for the benefit of the domestic manufacturer. A bounty does no more. But it is the interest of the society in each case to submit to the temporary expense, which is more than compensated by an increase of industry and wealth, by an augmentation of resources and independence, and by the circumstance of eventual cheapness. . . . It would deserve attention, however, in the employment of this species of encouragement in the United States, as a reason for moderating the degree of it in the instances in which it might be deemed eligible, that ✓ the great distance of this country from Europe imposes very heavy charges on all the fabrics which are brought from thence, amounting to from fifteen to thirty per cent. on their value, according to their bulk."

The Secretary refers to the question concerning the constitutionality of bounties, a doubt for which "there is certainly no good foundation." He cites the clauses of the Constitution conferring the right to lay duties, requiring uniformity in imposts, forbidding capitation or other direct taxes except in proportion to population, and denying the right to levy export duties. He then proceeds:—

These three qualifications excepted, the power to raise money is plenary and indefinite, and the objects to which it may be appropriated are no less comprehensive than the payment of the public debts and the providing for the common defence and general welfare. The terms "general welfare" were doubtless intended to signify more than

was expressed or imported in those which preceded; otherwise numerous exigencies incident to the affairs of a nation would have been left without a provision. The phrase is as comprehensive as any that could have been used, because it was not fit that the constitutional authority of the Union to appropriate its revenues should have been restricted within narrower limits than the "general welfare." . . . There seems to be no room for a doubt that whatever concerns the general interests of learning, of agriculture, of manufactures, and of commerce are within the sphere of the national councils as far as regards an application of money.

5. Premiums. Hamilton commends the policy of granting premiums in certain cases.

6. The exemption of the materials of manufactures from duty. The policy of that exemption, as a general rule, particularly in reference to new establishments, is obvious. ✓

7. Drawbacks of the duties which are imposed on the materials of manufactures. There are some instances in which it is wise to lay duties on raw materials. Drawbacks should be paid when such materials are used in manufactures. ✓

8. The encouragement of new inventions and discoveries at home, and of the introduction into the United States of such as may have been made in other countries, particularly those which relate to machinery. ✓

9. Judicious regulations for the inspection of manufactured commodities.

10. The facilitating of pecuniary remittances from place to place.

11. The facilitating of the transportation of commodities.

No one of the last four methods of encouraging manufactures comes within the scope of a tariff history. The last mentioned of all opens the question which later became the great political issue of internal improvements.

The first grand division of the "Report on Manufactures" — "to establish the utility of the thing to be encouraged" — having been completed, Hamilton turns to

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The first grand division of the "Report on Manufactures" — "to establish the utility of the thing to be encouraged" — having been completed, Hamilton turns to

“a specification of the objects which might occur as meriting or requiring encouragement, and of the measures which might be proper in respect to each. . . . In the selection of objects five circumstances seem entitled to particular attention: the capacity of the country to furnish the raw material; the degree in which the nature of the manufacture admits of a substitute for manual labor in machinery; the facility of execution; the extensiveness of the uses to which the article can be applied; its subserviency to other interests, particularly the great one of national defence.”

This part of the Report is chiefly interesting at the present day from the survey of the condition of manufactures existing at the time it was written. For the purpose now in hand the facts presented may be deduced from the discussion in Congress upon the first tariff law, and from an earlier passage in this Report.¹ It should be mentioned, nevertheless, that Hamilton makes more than twenty distinct recommendations of increase of duty, specifying the duty which he thought should be laid on the articles mentioned; or of a reduction or repeal of duties already existing on raw materials. He also proposed in a few cases the granting of bounties on domestic products. The recommendations, and their effect upon Congress, are mentioned more particularly in another place.²

Having completed the enumeration of manufactures which he deems worthy to be encouraged, Hamilton reverts to one or two topics already discussed. Although he has urged the granting of bounties in certain cases, he foresees difficulties in devising a working plan, and suggests limitations which may mitigate the incidental evils of the system. Bounties are difficult to be managed and liable to frauds; yet these objections are not sufficient to countervail their advantages. It will be necessary to guard with extraordinary circumspection the manner of dispensing them. They cannot with safety be extended beyond those

¹ Page 87.

² Page 102.

manufactories at which the making of the article is a regular trade, — that is, it would be inexpedient to grant bounties for household manufactures. While he has no fear that the progress of manufactures will so diminish importations as to imperil the revenue from customs, he urges that a substitute be found in every case for duties that may be abolished or reduced in accordance with his recommendations. If this course be followed he is confident of a surplus, which he would apply, first, to constitute a fund for paying bounties; and secondly, to constitute a fund for the operations of a board to be established for promoting arts, agriculture, manufactures, and commerce. He presents an outline of a plan of this board, which forms the conclusion of the Report.

This great state paper has been almost universally regarded as the foundation and storehouse of the argument for protection in the United States. As will have been observed by every reader, it approaches the question both from a constitutional and from an economical point of view. The equity and the expediency of protecting duties are considered. The objections to the system, drawn from its supposed unfairness to particular classes in the community and to particular regions of the country, are carefully examined. In short, the propriety of adopting a policy of encouraging manufactures, not merely by duties on competing foreign articles, but by bounties on the domestic articles, is advocated with directness, boldness, and confidence; and the contrary policy of *laissez faire* is rejected emphatically, as unwise and unsuited to the country.

In these circumstances it is quite impossible to treat the Report itself as anything but a plain, straightforward, uncompromising argument for protection. Several points are nevertheless raised in recent times, not so much with reference to the Report itself, concerning which there is and can be no dispute, as in regard to the degree to which

the Report represented a genuine protectionist sentiment existing at the time and finding expression in the legislation by Congress. The most weighty opinion on the part of those who would differentiate the protectionism of the eighteenth century from that which, they assert, became dominant for the first time after the war of 1812, is that of Dr. Henry Carter Adams, in his monograph on "Taxation in the United States, 1789-1816," already cited. Moreover, the reasons on which this opinion is founded are set forth with greater fulness and plausibility by him than by any other writer on the subject. They are therefore given in full.¹ Some of his premises may be freely con-

¹ But what shall be said of the Hamilton "Report upon Manufactures"? Does not this show the presence of industrial protection as an independent, aggressive factor? It is assumed that the facts of this Report are well known, and we are therefore excused from a restatement of them. Nor is it of present importance that this Report is, in many of its parts, illogical and contrary to sound economic doctrine, for we are concerned alone with its historical interpretation.

Attention has been already called to the fact that the desire for a strong government, which, prior to 1789, sprang spontaneously from the experienced evils of executive weakness, came to be the controlling motive of the first administration under the new Constitution, and the true significance of this "Report upon Manufactures" can only be discovered in the light of this fact. Many measures had been already taken to induce coherency in the system before the appearance of this paper. A National Bank had been established, the refunding scheme set on foot, assumption of State debts pressed to acceptance, and steps taken towards providing for national coinage. All these measures were under the guidance of one very simple, definite purpose which gave direction to the thought of the Federal party, and this purpose was to secure executive centralization and to build up a sentiment of nationality. This "Report upon Manufactures" must be viewed in the same light and take its place by the side of these other measures; indeed, it cannot be separated and treated as an isolated state paper without doing violence to plain rules of historical interpretation. It seems legitimate, therefore, to conclude that the protectionist sentiment which gave rise to this Report, as well as that in the community to which it appealed, was very far from being a sentiment merely industrial in character or resting wholly on an industrial basis; indeed, one is warranted in saying that it proves the total subordination of the industrial to the political problem. Can one think that Bismarck honestly believes that his newly enacted corn laws will enrich the people of Germany? What he wants is

ceded without admitting his conclusions. Thus, in that part of his argument which rests upon the principles of historical interpretation, his assertion that Hamilton's scheme was one great whole, of which each part depended

nationality at any cost. This is what the leaders of the Federal party wanted in 1791, and it is this political purpose, rather than any industrial theory, that is the key to the real meaning of Hamilton's "Report upon Manufactures." This interpretation harmonizes perfectly with what Hamilton avowed as his purpose, "to let the thirteen States, bound together in a great, indissoluble union, concur in erecting one great system superior to the control of transatlantic forces or influences, and able to dictate the connection between the old and new world."

Another fact, significant as pointing toward this same theory of interpretation, is found in the further development of the general financial policy of the government. The average rate of duties imposed by the law of 1792, which is said to realize the purpose of the Hamilton Report, was but thirteen and one half per cent., and this extension was justified by the need of revenue to protect the frontiers. The two and one half per cent. addition to the list of unspecified articles, bringing the rate up to seven and one half per cent., was limited by the law to two years, when it was supposed the exigency would have passed. Until the expiration of these two years no new tariff act was presented, and after that there were no decided changes of a protective character. But the point of importance for us is, that the rate of customs had by no means reached the limit which experience has shown to be the highest revenue rate; yet, notwithstanding this, there was introduced and developed by this Federal party (supposed to be a party adopting protective theories) a general system of internal duties. Had the rate upon customs reached twenty or twenty-five per cent., this resort to excise could be explained even upon the assumption of protection, but the introduction of other taxes while customs rates were far below the revenue standard, shows that there was no understanding, or at least no appreciation, of a fully developed system of protection in the control of the Treasury Department. And, further, it must be remembered that excise duties, when placed on articles with which foreign articles compete, counteract the protective force of the customs tariff, and this was the case so far as beer and spirits were concerned. It seems, therefore, proper to say, without pressing the statement too far, that the subsequent development of Treasury management does not show such strict adherence to the principles of the "Report upon Manufactures" as to warrant one in reading from it the formulated opinion of the country. It afterwards became a state paper of importance, when the reputation of its author could be used to bolster up a system which had developed so far as to invite criticism; but at the time of its appearance it is very doubtful if its full significance was appreciated. — "Taxation in the United States, 1789-1816," pp. 30-32.

on the rest, and that the encouragement of manufactures was one of those parts, — all this is true and undisputed. But the existence of the motive implied in Professor Adams's assertions neither excludes nor dwarfs other motives. It cannot have escaped notice that although the order under which the Report was prepared directed inquiry as to such protection and encouragement of manufactures "as will tend to render the United States independent of other nations for essential, particularly for military, supplies," the limitation was wholly disregarded in the Report. Hamilton's argument — it need not be said to those who have read even the brief summary given — is far broader than a mere consideration of military exigencies, broader than an examination of the means for making the United States independent of foreign nations. It advocates the introduction of manufactures as adding to the aggregate wealth, as inducing immigration, and for other reasons in no way connected with a system of centralized government, or with political as distinguished from industrial objects in view. Indeed, if Hamilton had an ulterior purpose in writing his Report, one, namely, of securing executive centralization and building up a sentiment of nationality, he succeeded to a marked degree in concealing that purpose. The Report is related to the funding scheme, the assumption of State debts, and the payment of the national debt, as any plan of ways and means must be related to an expenditure to be provided for; and apparently not otherwise.

Professor Adams has far less ground, however, to hold his opinion when he descends to particular reasons than when he is arguing upon generalities. At the time Adams wrote, the official figures of the Treasury Department indicated that the average rate of duty collected under the tariff acts before 1796 was only $13\frac{1}{2}$ per cent. But the sums reported as the yield of customs duty were the net amount paid in by collectors, after deducting the

cost of collection, and not the amount paid by importers. The figures were revised in 1888, and they now show, as they should, the whole amount of duties paid; and the average is above 20 per cent.¹ The bearing of this fact upon Professor Adams's argument need not be pointed out. Would his argument have been sound if the assertion that the rate was $13\frac{1}{2}$ per cent. had been accurate? In dealing with this epoch in our history we must not forget that the elements which then constituted the natural protection of manufactures were more effective than they have been in later times. Hamilton himself, in discussing the question of bounties, estimated the charges — exclusive of duties — upon the marketing of foreign goods at from fifteen to thirty per cent.² It follows that a rate of duty much lower than is now necessary to give home manufactures full protection might then have been ample for the purpose.

The other points in Dr. Adams's argument seem to be based upon an insufficient examination of the historical facts regarding the financial legislation from 1791 to 1795. It is asserted that "a general system of internal duties" was introduced by the Federal party; that the resort to excise in the circumstances of the case "show that there was no . . . appreciation of a fully developed system of protection under the control of the Treasury Department"; and that the admitted effect of an excise in counteracting the effect of a protective duty "was the case so far as beer and spirits were concerned." Every one of these statements is erroneous. There was no general system of internal duties. The excise at first applies to distilled spirits only. In 1794 duties were placed upon private carriages and carriages kept for hire, upon the manufacture of snuff and refined sugar, and upon sales by auction. A license fee was

¹ In 1793 it was 21.22 per cent.; in 1794 it was 24.82 per cent.; in 1795 it was 13.96 per cent.

² See p. 86, *ante*.

also required of dealers in spirits. That was the extent of the system of internal duties. Secondly, although there is no evidence that Hamilton originated these internal duties, there is a probability that he did so, and a certainty that he approved of them, as is shown by his recommendation in a communication to the Senate, on January 20, 1795, that they be continued in force until January 1, 1800.¹ Finally, in no case was the excise duty allowed to counteract the effect of the protective duty. When an excise was laid upon domestic spirits, the duty upon foreign spirits was more than doubled.² The act which laid an excise of four cents a pound on domestic snuff imposed a customs duty of twelve cents in addition to the former duty of ten cents upon imported snuff. The act which taxed domestic refined sugar two cents a pound increased the duty on imported refined sugar from four cents to nine cents, which must have been prohibitive.

Quite as erroneous as are the statements concerning the excise laws is the remark that "the subsequent [to the Report] development of Treasury management does not show such strict adherence to the principles of the Report," etc. In reply to this it may be said, first, that of the thirty specific recommendations contained in the "Report upon Manufactures" (omitted from the summary) twenty-one were for an increase of duty; of these eighteen were followed in the act of 1792. Five were for a remission of the duty on raw materials; three were followed. Four were for a bounty; no bounty was granted. But, still further, on March 8, 1792, the House of Representatives asked the Secretary to report on the best mode of raising the additional supplies requisite for the ensuing year. In his reply,³ dated March 16, Hamilton repeated sixteen of the recommendations contained in his "Report upon Manu-

¹ "Annals of Congress," Third Congress, 1793-1795, p. 1342.

² There was no excise on beer.

³ "Annals of Congress," Second Congress, 1791-1793, p. 1099.

factures ;" and fifteen of them were adopted and enacted in the tariff act of that year. Whatever else, then, may be said of that act, it cannot be said that it did not embody Hamilton's ideas, since he himself drafted it, and it was passed almost without amendment. Nor is it easy to escape from the inference that, if Hamilton urged protection and pointed out the way to effect it, and if Congress adopted his plan in its entirety, Congress itself approved, sanctioned, and introduced the system.

One other point raised by Professor Adams may be considered briefly, namely, that the protectionist sentiment in the Report and in the community was not a "sentiment merely industrial in character, or resting wholly on an industrial basis." That is obvious, taking the words quoted in their ordinary modern signification, from the Report itself. There was no basis for a sentiment merely industrial in character. There could be no argument for a protective system founded upon solicitude regarding the welfare of industries already established, when as yet no employer of labor in manufacturing in the country had upon his pay-roll as many names as are to be found at the present time on that of a well-appointed city newspaper. Hamilton does not once refer to the injustice of abandoning to their fate manufacturers who had been encouraged by State laws to engage in the business. The references to that feature of the question, in the debates in the First Congress, are the only allusion to the industrial side of protection. Hamilton gave the reasons for favoring a protective policy with great frankness and lucidity. The security of the country against calamities that might be brought about by interruption of commerce in time of war, is one powerful reason ; it is not the only, or the most prominent reason. It runs through the whole Report that the encouragement of manufactures, the assisted establishment of new industries as well as the protection of those which had made a start, in time of peace no less than

in time of war, is to result in the expansion of the country in population, in an increase of wealth, in the comfort and general welfare of the people. It may be said with truth that those are the reasons that have always actuated and do still control the opinions of a vast majority of the people who class themselves as protectionists. Unless, therefore, it can be maintained that protectionism is not protectionism if it be not advocated for reasons which are applicable to the developed industrial system of our times, if it does not derive its political strength from persons who have a selfish end to be served by it, and if it does have for its aim — mistaken or not as the means to an end may be regarded — an enlargement of the aggregate wealth and resources of the country, — unless this can be successfully asserted, the "Report upon Manufactures" and the legislation which was based upon it were dictated by the same spirit that has animated protectionists for more than a hundred years since the Report was written.

Reference has been made, casually, in the preceding discussion, to the tariff acts of 1792 and 1794. It is necessary now to narrate the circumstances of their passage more in detail. The President reported to Congress in his third annual address, in October, 1791, that the revenues "promise to be adequate to their objects," and that no new burdens were necessary. But in December, he had to communicate to Congress the intelligence of the defeat of General St. Clair. This calamity entailed a heavy expense to defend the frontiers. A considerable increase of the army was authorized by a special act. As the revenue for the year was estimated to be less by \$650,000 than the ordinary and extraordinary expenditures, a resolution was offered in the House of Representatives on March 7, 1792, that the Secretary of the Treasury be directed to report his opinion of the best mode of raising the additional supplies requisite for the ensuing year. Upon this resolution

a remarkable debate took place, and was continued on the next day. The debate on the 8th is alone reported; but it is clear, from the remarks of Mr. Sedgwick, of Massachusetts, that Mr. Madison objected strongly to asking the Secretary to outline a policy of taxation, and that Mr. Fitzsimons also opposed the resolution. How far they went in opposition cannot be known. Mr. Page, of Virginia, who quoted some of their remarks approvingly, thought that the motion could "be supported on no other principle but such as may be used to subvert our government and to introduce a monarchy;" that the arguments in support of it were "mischievous, and ought to be opposed by every friend to a free government;" and that the English Parliament was "not so obsequious to ministers as some gentlemen are disposed to be to our secretaries." These extracts represent fairly the spirit in which the resolution was opposed. Nothing was urged against the Secretary's knowledge and judgment in financial matters, nor was there a word of criticism of his revenue system. The objection was based wholly upon the alleged impropriety of asking advice from an appointed minister, and upon the constitutional duty of the House of Representatives to originate tax bills. The resolution was adopted by a ye and nay vote of 31 to 27, which was in a general way a party vote, and, more precisely, a sectional vote. Pennsylvania, Virginia, North Carolina, and Georgia, gave 22 of the 27 negative votes. New England, New York, New Jersey, Maryland, and South Carolina gave 27 of the 31 affirmative votes.

The Secretary of the Treasury reported a plan for a revenue bill on March 16, 1792. He estimated the expense entailed by the act making additional provision for the protection of the frontiers at \$675,950; the ordinary surplus for the year at \$150,000; and the amount necessary to be raised at \$525,950. Of three expedients, — a sale of the interest of the United States in the Bank of

the United States, a loan, and additional taxes, — he unhesitatingly chose the last named. In accordance with this opinion, he proposed additional import duties. In discussing his own propositions he remarked:¹ "It will not have escaped the observation of the House that the duties which were suggested in the Secretary's report on that subject as encouragements to manufactures are for the most part included in the objects of this report."

The report was referred to a committee of which Mr. Fitzsimons was chairman. On the 11th of April the committee reported a bill which seems to have followed Hamilton's recommendations with absolute exactness. The bill was taken up for consideration by the House of Representatives on April 17 and was debated until the 21st, when it was passed. The debate is not fully reported. A motion was made to increase the duty on hemp from 54 cents to \$1 a hundredweight, and to add 75 cents a hundredweight to the duty on cordage. After discussion the motion was carried. A motion was also adopted to strike out the exemption of raw cotton from duty. Hamilton had advised that cotton be placed on the free list. The duty was advocated by all the Southern members who spoke upon the question, and opposed by all the Northern members. The question between them was as to the adaptability and supply of American cotton. All amendments having been voted upon, and the question being on passing the bill, Mr. Page, of Virginia, opposed it. "If the bill were what its title says it is [for raising a further sum of money for the protection of the frontiers], I should be the last man in this House to vote against it. . . . Sir, it is not a bill for the protection of the frontiers, but for the encouragement of certain manufactures and of the fisheries, and for the increase of the sinking fund."

Mr. Murray, of Maryland, reviewed the proceedings by which the House had come to its present position. He

¹ "Annals of Congress," Second Congress, 1791-1793, p. 1105.

criticised those members who objected to this bill but had no plan of their own to substitute for it. Coming to the objection that it was a protective measure, he called attention to the fact that every local interest which had asked for protection had been gratified, — the hemp and cotton of the South, and the iron of the Middle States. The predominant feature of the bill was its nationality, giving impartial and as far as circumstances admitted, equal justice and encouragement to the interests and raw materials of the respective States. "In the early stages of this bill several gentlemen complained of the preference shown to the manufacturing parts of the country, and it was said that the protecting duties would operate exclusively in the Eastern States. When, however, on the completion of this bill we see the reciprocity under which the agricultural and the manufacturing interests have been viewed and cherished, we must be forced to own both the liberal and conciliating spirit with which the House has been moved, as well as the mutual dependence on which these apparently opposite interests really are supported. . . . The objection of some gentlemen that the protection of manufactures was not the original object of the bill he did not think a sound one. Several modes of raising the sum, which is our first object, were held out as alternatives. This mode by imposts was most liked. The line of taxation being once adopted, the protection of manufactures naturally arose out of the thing itself. It arose not as a prime object, but as a necessary incident. He thought the bill would insure productive revenue; and he thought the collateral benefit, as it touched a production of the natural riches of the country, a high recommendation."

The bill was passed by a vote of 37 to 20. The division was quite different from that on the reference of the matter to the Secretary. New England gave but two votes against the bill; Pennsylvania came unanimously to the support of the measure; Virginia was nearly evenly

divided. The Senate made sundry amendments relating to matters of administration, not to rates of duty, and passed the bill. An agreement between the two Houses was reached quickly and the act was approved on May 2, 1792. Mr. Murray seems to have set forth exactly the motives and wishes of the majority of Congress in passing the bill. It would not have been introduced at all but for the urgent necessity of more revenue, which was therefore its prime object. The occasion of an increase of the tariff having arisen, the opportunity of adopting Hamilton's recommendations of protective duties was taken; and on the request of members from certain parts of the country, who thought their local interests not sufficiently regarded, the system of protection was extended and made as general as circumstances allowed.

A situation somewhat like that which led to the enactment of the law of 1792 rendered necessary an increase of the revenue in 1794. It may be maintained with some plausibility that the act of 1794 originated in a spirit of commercial retaliation rather than in the need of revenue. The evidence for and against this proposition is not conclusive. On the 3d of January, 1794, Mr. Madison introduced in the House of Representatives a series of resolutions, the first of which declared "that the interest of the United States would be promoted by further restrictions and higher duties in certain cases on the manufactures and navigation of foreign nations employed in the commerce of the United States than those now imposed." His idea was to lay additional duties on goods coming from countries with which the United States had no commercial treaty. There is no doubt that the commercial regulations of Great Britain were highly injurious to the mercantile interests of this country; but it is impossible here to go into any of the details of our grievances, or into the minute comparisons, which were made with tiresome proximity, of the policy of Great Britain with that of France.

The resolutions of Mr. Madison were debated in Committee of the Whole on several days in each week, until the 17th of March, — more than ten weeks, — but after that day no mention is made of them. They were never voted on by the House. On the 26th of March a resolution was passed constituting a committee of fourteen members "to inquire whether any or what further or other revenues are necessary for the support of public credit; and if further revenues are necessary, to report the ways and means." The resolution was understood by Mr. Page, of Virginia, to direct the committee to "inquire" of the Secretary of the Treasury; and he opposed it as a proceeding far more objectionable than that in 1792, when the inquiry was made directly. The resolution was passed; and Mr. William Smith, of South Carolina, whose objections to Mr. Madison's resolutions fill more than twenty of the large, closely printed pages of the "Annals of Congress," was made the chairman of the committee.¹

The report was made on April 17, 1794. The committee found that the ordinary deficit for the year, according to the estimate of the Secretary of the Treasury, would be \$425,633; that \$650,000 additional ought to be appropriated for the military service; and that the interruption to commerce would probably cause a loss of \$1,300,000 of revenue from duties according to the existing rates. The sum of these items is \$2,375,633. It had been determined already to raise a million dollars by borrowing. The deficiency the committee proposed to supply by a series of measures laying an excise on carriages, sales by auction, manufactured snuff, and sugar, establishing

¹ "I am at no loss to ascribe Smith's speech to its true father. Every tittle of it is Hamilton's, except the introduction. There is scarcely anything in it which I have not heard from him in our various private, though official discussions." (Jefferson to Madison.) Nevertheless, Mr. Smith expressed his own views, and on subsequent occasions, when Hamilton's help was not at hand, he made reports and speeches on financial subjects which prove that he was in no need of assistance.

stamp duties, requiring licenses for retail dealers in liquor, a direct tax on land, and an increase of the impost. The propositions were debated at great length in Committee of the Whole. The direct tax was rejected by a most emphatic vote, — seventy members for striking out the tax, the nays not counted. The bill laying a stamp tax was approved by the committee, but when put on its passage was defeated, 50 to 32.¹ The other excise measures were passed, as was also the bill increasing customs duties.

The House pronounced adversely to duties discriminating against Great Britain when first the resolution relating to an increase of the impost was considered. The opinions expressed seem to have convinced the mover of the amendment that the House would not agree to it, and the motion was withdrawn. The impost bill was reported on May 13; it was considered in Committee of the Whole on the 16th, and reported back to the House. The only debates were upon the salt and coal duties. The Pennsylvania and Western members successfully resisted an addition of three cents a bushel to the salt duty, and successfully defended an increase of duty upon coal. The bill was passed on the 17th; the Senate passed it with amendments on June 3. An agreement was quickly made upon the amendments, and the act was approved June 7, 1794.

¹ A tax on stamped vellum, parchment, and paper, used in a great variety of legal documents, was levied by an act passed in July, 1797, to take effect at the end of the year. By a subsequent act the time for its coming into operation was postponed until July 1, 1798.

V

NON-INTERCOURSE, WAR AND PEACE

WE have now reached a period when the financial policy of the government was fully established and when the discussion of abstract principles of taxation ceased for a long time. Numerous changes in the revenue laws were required and were made. Twenty-four acts modifying the duty on foreign imports more or less were passed during the twenty-two years between the act of 1794 and the general revision of the tariff in 1816. With two or three exceptions they had no other motive than to adjust the revenue to the needs of the Treasury. A summary of this legislation may properly precede a survey of the general conditions that prevailed during those years.

In 1795 the duties on sugar and tea were simplified. An important change was also made in the method of valuing goods charged with an ad valorem duty. The early practice was to assess duties upon the value of goods "at the time and place of importation." The new law imposed duties upon the value at the place of exportation plus all charges, — commissions, outside packages, and insurance only excepted.

In 1797 an addition was made to the duty upon sugar, molasses, tea, cocoa, velvets, and muslins. The revenue derived from the increase was appropriated specifically toward the payment of the public debt. A later act of the same year increased the duty on salt from twelve cents a bushel to twenty cents, and augmented correspondingly the drawback on salted provisions and pickled fish and the bounty to vessels engaged in the cod fishery. The salt

tax was a standing grievance of the people who dwelt in the "back country"; and the increase was strenuously resisted by their representatives; but it was carried by a narrow majority. The act was by its terms limited in duration to two years. In 1800 its operation was extended for ten years; in 1807 the salt duty and its concomitant drawbacks and bounty were all repealed.

Further additions were made, in 1800, to the duty on sugar, sugar candy, molasses, wine, and all goods paying ten per cent. *ad valorem*. This increase also was appropriated toward the payment of the public debt. The troubles with the Barbary powers led to the enactment of a law, in 1804, laying two and a half per cent. additional duty on all goods paying *ad valorem*, which addition constituted the "Mediterranean fund," and was appropriated toward the expenses of the war. The act was to continue in force until the expiration of three months after the conclusion of peace with the regency of Tripoli. The increased revenue was so much needed that the section of the act levying the additional duties was continued in force by eight successive acts until the war of 1812. In the same year, 1804, which saw the creation of the Mediterranean fund, a few articles were added to the free list, and the following among others were charged with specific instead of *ad valorem* duties: foreign fish, fruits, nuts, spices, window glass, segars, and lime. In 1805 old copper, saltpetre, and sulphur were added to the free list. It is obvious that the last-mentioned act was dictated by the desire of the government to provide itself with ammunition in the event of war.

At the beginning of the war of 1812 all duties were doubled. The act was to continue in force until one year after the conclusion of peace with Great Britain. It was extended, in 1816, until the general tariff act of that year came into operation. In 1813, the duty of 20 cents a bushel on salt was reimposed. An act of March 3, 1815,

repealed the discriminating duty of ten per cent. against vessels of any foreign country that should discontinue discriminating duties against vessels of the United States. Thus was reversed a policy which had been adopted at the beginning of tariff legislation. The fact that a foreign country had repealed discriminating duties upon goods brought to it in American vessels was to be ascertained by the President. This was the first case, it is believed, in which an act of Congress affecting the revenue was made operative or imperative upon the proclamation of a fact to be ascertained by the Executive. The constitutionality of such conditional legislation has been questioned in recent years ; it was not questioned in the time of Madison.

Three acts only of those just mentioned had any other origin or purpose than a provision of revenue. The object of the act of 1805 putting on the free list certain materials used in war, has already been mentioned. The salt duty was extremely unpopular in those States which gave the Republican party its ascendancy in the country. It was opposed by Mr. Gallatin when he was a member of the House of Representatives. As Secretary of the Treasury he was reluctant to give up any taxes. Nevertheless, the abolition of the tax was demanded so strongly that Mr. Jefferson recommended the repeal of the duty, in his annual message in December, 1806. Congress acted upon the recommendation, as we have seen ; and the duty was restored later, as has also been noted.

There was a trace — an extremely faint trace — of protection in the act of 1804. Petitions were sent to Congress during nearly every session asking for protection for some single industry. For the most part the petitions were reported on briefly to the effect that the increase of duty asked for was not expedient. Two reports made to the House of Representatives during the first session of the Seventh Congress, the first session in Mr. Jeffer-

son's administration, deserve notice. A petition by the owners of coal mines which they were desirous of developing, praying for an increase of the duty on foreign coal, was referred to the Committee of Ways and Means. John Randolph reported adversely to the petition on February 4, 1802, and appended to the decision upon the particular matter referred to the committee an expression of the opinion "that it is not consonant with the principles of a wise policy to lay duties not for the purpose of raising revenue to the government, but to operate as a bounty on any particular species of labor at the expense of the community in general on whom the taxes are laid."¹ This was not a universally prevalent opinion, for on the 10th of the same month Mr. Samuel Smith, of Maryland, reporting from the Committee on Manufactures upon other propositions, declared "that in the opinion of your committee such manufactures as are obviously capable of affording to the United States an adequate supply of their several and respective objects ought to be promoted by the aid of government." Having next asserted that there are two modes of giving such aid, — the removal of duties from raw materials, and the imposition of higher duties upon foreign manufactures than upon imports in general, — the committee urged "that at the present juncture our infant manufactures peculiarly demand and merit the protection of government." It may be thought that the phrase just quoted, "capable of affording to the United States an adequate supply," limits the principle to such materials as might be needed by the government. An enumeration of the articles on which the committee proposed a change of duty contradicts this view of the matter. It was suggested that bristles, rags, sulphur, and saltpetre be admitted free of duty, and that the duty on the following, among other articles, be increased to 20 per cent. : hats, brushes, stoneware, cannon

¹ American State Papers, "Finance," vol. i. p. 729.

and balls, bottles, glue, soap, candles, and manufactures of iron.¹

There was no change in the tariff laws in 1802, the year when the reports cited were made. Mr. Smith, in a subsequent report from the same Committee on Manufactures, expressed the opinion that since the rate of duty on all classes of goods was nearly equal, the duties existing did not operate as a protection to manufacturers, — that they were an injury rather than a benefit.² Mr. Mitchell, of New York, made a report from the Committee on Manufactures at the first session of the Eighth Congress, in January, 1804, urging strongly the principle of protection, and repeating substantially the specific recommendations made by the committee in 1802.³ The act of 1804 contains but a meagre response to the plan of the committee. All the articles suggested were placed upon the free list; but no protecting duty was levied save on window glass. In this act only, during the long period of twenty-two years, was any concession made to the protective policy.

Nevertheless it would not be correct to assume that the sentiment in favor of that policy was dead or even dormant. Reasons will presently be given why it was not aggressive. Meanwhile it may be said that the spirit of a time may often be divined as accurately by a study of propositions which resulted in no legislation as by consideration of the laws passed by Congress. Let us then consider some of the indications of the opinions held at Washington and throughout the country at this time. The facts are presented chronologically, and consequently without classification.

In 1805 some makers of hollow ware petitioned for additional duties on iron goods. Mr. Crowninshield, of Massachusetts, — who was soon afterward appointed Secretary of the Navy, — reported from the Committee on

¹ American State Papers, "Finance," vol. i. p. 730.

² *Ibid.* vol. ii. p. 29.

³ *Ibid.* p. 80.

Manufactures that "the protecting duty gives the American manufacturer all he can reasonably ask for." If the duty were too moderate and not sufficient to give a preference to the domestic product, the committee would have felt authorized to propose an addition to it. But insufficiency of the duty was not alleged. "Surely they do not wish to claim a monopoly!"¹ The implication of a full approval of the protective system is clear.

Secretary Gallatin, in his annual report in November, 1807, gives reasons for preferring an increase of duties to any other method of obtaining additional revenue, and cites as one of these reasons that "the increase of domestic manufactures, which may be indirectly effected, is in itself a desirable object."²

A petition by makers of paints, who asserted that they had invented a new and improved process of making them, and asked for higher duties, drew from the Committee on Manufactures, in December, 1807, a curt statement that if the new process was better than the old they ought to be able to compete with the old; that their request was "unreasonable and ought not to be granted."

The Journeymen Hat Makers' Society of New York sent a memorial to Congress in 1807, representing that owing to the low duty on hats the domestic trade, by which they earned their daily bread, was going to ruin. It does not appear that any committee reported upon the petition for increased duties, which was not granted.

In the same month, December, 1807, a remonstrance was received from certain coppersmiths, who represented that a petition was to be offered praying for a duty upon copper in sheets. The petition itself appeared in January, 1808, signed by Paul and Joseph W. Revere. They asserted that they had established works capable of supplying the whole

¹ "American State Papers," vol. ii. p. 171.

² *Ibid.* p. 248. The word used is *affected*. The use of *effected* where *affected* should be employed will be observed in a subsequent citation.

country with sheet copper; and they asked that a duty should be levied upon that article and that old and scrap copper be made free. The report of the Committee on Manufactures was adverse to the petition for the duty on sheet copper, but favorable to making the raw material free. The reasons given, which need not be quoted, were based upon the desirableness of protecting rather the many coppersmiths than the single firm which proposed to monopolize the benefit of the tariff laws.

Petitions by the makers of twines and lines, in 1808; by salt manufacturers, in 1809; by hemp manufacturers of Kentucky, in the same year; by other hemp manufacturers of the same State, in 1811; by the makers of morocco leather, also in 1811; by New Jersey iron manufacturers, in 1811; and by brewers in 1812, call for little notice. The hemp manufacturers in both petitions complained that although heavy and effective protecting duties had been laid on many articles, their trade had been left completely exposed to foreign competition. The petition of the brewers made the extraordinary request that Congress would take "such steps as may be promotive of encouraging the manufacture *and use* of malt liquors in the United States."

In 1809, and again in 1811, the Committee on Manufactures reported upon the petitions referred to it, and strongly urged the imposition of higher duties for the purpose of protecting manufactures. The report in 1811 referred to and adopted the specific recommendations made by the committee of the preceding Congress.

During the year 1810 two events occurred which give important indications of the spirit of the time, although in neither case did legislation on the tariff result. The first of these was Gallatin's "Report on Manufactures," sent to the House of Representatives, April 17, 1810. The resolution which led to the preparation of the report was offered in the House May 31, 1809, by Mr. Bacon, of Massachusetts. It asked the Secretary to transmit to the House his opin-

ion of the best plan for encouraging and promoting manufactures. Mr. Matthew Lyon, of Vermont, opposed a motion to print the resolution, and opposed its adoption as postponing for a year the relief which he thought should be granted to manufacturers *now*. It was cold comfort we offered to them, he said, to promise that next year we shall be informed what is best to be done for them. The resolution was adopted; but on the following day Mr. Lyon brought in a new resolution that "for the protection of those who have commenced and the encouragement of those who may be disposed to set on foot" certain manufactures, additional duties ought to be laid upon a variety of enumerated articles, including all goods made of leather, hemp, and cotton, on glass, paper, nails, hats, clothing, millinery, and beer. Mr. Macon, of North Carolina, who had been Speaker of the House from 1801 to 1807, and was one of the most influential Republicans in the body, stoutly opposed the resolution. In his country they wanted no protecting duties on manufactures. The only way to encourage the use of domestic goods was for "our great people," the President and others, to use them and make them fashionable. For his part, he had no idea of laying taxes to induce men to work in iron, leather, or any other article. It was only to tax the many for the benefit of the few. It is worth noting that the only speakers from Massachusetts in this debate were on Macon's side of the question, although they did not use his arguments. The resolution did not come to a vote.

Gallatin's Report on Manufactures was not so elaborate nor so argumentative as Hamilton's; but it substantially echoed Hamilton's recommendations of the principles to be observed in encouraging manufactures. We shall have occasion to refer to it again, and to draw from it some facts relating to the condition of industry at that time. At present it is necessary to make but a single quotation from the Report to show Gallatin's opinion in 1810.

The information [he wrote] which has been obtained, is not sufficient to submit, in conformity with the resolution of the House, the plan best calculated to protect and promote American manufactures. The most obvious means are bounties, increased duties on importations, and loans by government.

Occasional premiums might be beneficial; but a general system of bounties is more applicable to articles exported than to those manufactured for home consumption. The present system of duties may in some respects be equalized and improved so as to protect some species of manufactures without effecting¹ the revenue. But prohibitory duties are liable to the treble objection of destroying competition, of taxing the consumer, and of diverting capital and industry into channels generally less profitable to the nation than those which would have naturally been pursued by private interest left to itself. A moderate increase will be less dangerous, and, if adopted, should be continued through a certain period; for the repeal of a duty once laid, materially injures those who have relied on its permanency, as has been exemplified in the salt manufacture.²

Lack of capital Gallatin regarded as the principal obstacle to the spread of manufactures, and remarked that "the most efficient and most obvious remedy would consist in supplying that capital." To this end he suggested that the United States should create a circulating stock, bearing a low rate of interest, and lend it at par to manufacturers. The similarity of this proposition to the "subtreasury" plan of the Populists of our own time, who devised it for the benefit of farmers, has not, it is believed, attracted notice. Gallatin's full adhesion to the policy of encouraging manufactures by means of import duties, and his express sanction of an increase of duties for that purpose, emphasized by his objection to prohibitory duties, are points to be borne in mind when we come to a later stage of the tariff controversy.

¹ Misused, or misprinted, for *affecting*.

² American State Papers, "Finance," vol. ii. p. 430.

The second of the two events mentioned above was the discussion in Congress, upon the tariff, in the spring of 1810, in connection with the retaliatory legislation against England and France. A bill was introduced to increase the revenue, and in the course of the debate Mr. Macon opposed it, on the ground that its real purpose was to protect manufactures. That he thought adverse to the best interests of the country. It would kill the household industry. Said he, "Lay a duty so as to encourage the making of muslins, and it will take fifty per cent. more of country-made cloth to exchange for muslins." This bill, however, did not come to a vote. There was an immense amount of political intrigue in Congress at that time. The Senate was controlled by a clique of Gallatin's determined foes; the House was favorable to the Secretary. Two or three bills intended to express the resentment of this country against England and France, and to meet their unfriendly acts with retaliatory measures, fell between the two Houses. Each body adopted amendments which the other rejected absolutely. At last, the bill known as "Macon's No. 2" was introduced. It is not necessary to state the provisions of the bill; but it is important for our purposes to know that the House added to it a measure for an increase of duties, which it was asserted, and virtually admitted, was intended to protect manufactures. The Senate struck out this increase — not because it was opposed to protection, but because it was hostile to Gallatin — and inserted a pet measure of its own. On the last day of the session both Houses receded from their amendments, and the bill became a law.¹

From the foregoing cursory — and yet thorough — review of the tariff acts and propositions from 1794 to 1816, it will be seen that almost nothing was done with any other object than revenue in view. The absence of general legislation to modify the incidence of customs duties is

¹ See Henry Adams's *History*, vol. v. pp. 194-198.

easily explained without resorting to the theory, not supported by facts, that the sentiment of the people and of their political leaders had changed. The failure of such legislation did not result from the transfer of the government to another party at the beginning of the century. So far as the tariffs prior to that time were a reflection of any other purpose than the provision of means for the support of the government, they were not especially the work of the Federalist party. President Adams, indeed, did not once refer to the matter of protecting manufactures in either inaugural or annual address. On the other hand, Jefferson and Madison did so no less than five times each, and always in a spirit commendatory of the principle of protection.¹ It is not necessary to quote the language in which they expressed full acceptance of the proposition that the right to encourage manufactures by means of the tariff existed and should be exercised.

Why, then, was there so small a change in the basis and in the details of the customs revenue laws during a period of almost two decades?

In the first place, because the attention of public men and of the people generally was turned naturally and strongly in another direction. During the last years of the eighteenth century and until the expiration of the Jay treaty, American commerce flourished exceedingly. The European wars brought an opportunity to the trading ships of a neutral nation of which the merchants of our Atlantic seaboard were not slow to avail themselves. The traffic was hazardous in those days, when almost anything was permitted by international law and custom to a belligerent. But the seafaring life is essentially a daring occupation. The Yankee merchants gladly took the risks

¹ See "Messages and Papers of the Presidents," 1789-1897, by James D. Richardson, Government Printing Office, vol. i. For Jefferson's references, pp. 330, 346, 373, 409, and 435. For Madison's, pp. 468, 483, 495, 567, and 574.

and drew immense profits from their trade. A free outward movement of American products, an increasing volume of importations, and a large trade in the handling of foreign goods, were the features of this period in our history. The Peace of Amiens, in 1802, was actually mentioned in a report to Congress as a national calamity, and as raising the question what was to be done to avert the evil consequences of the untimely event. But after an interruption of thirteen months the war broke out afresh, and did not end until this country was in the midst of its second struggle with Great Britain. Even when England began the series of harsh measures against our commerce which led ultimately to the embargo and the war, the enterprise and audacity of American merchants more than made up the losses they suffered by the British and the lesser French spoliations. It was not they who urged the government to protect them by forbidding them to send their ships on voyage.

The meagre, and certainly inaccurate, returns of the foreign trade show how commerce advanced during this era. From a reported annual average of only about 30 million dollars' value of importations during Washington's first administration, the value of foreign merchandise brought into the country increased to almost 80 millions a year at the end of Adams's term, and to 129 millions in 1805-07. A large part of the trade represented by these figures was indirect commerce between the West Indies and England. The exports of foreign merchandise increased from \$1,400,000 a year in 1791-93, to 39 millions in 1798-1800, and to more than 58 millions annually in 1805-07. The value of reëxports in 1806 — 60 million dollars — has never since been equalled. It is nearly four times the average of recent years. Of course, since the trade of the present day is wholly unlike that at the beginning of the century, a comparison of the volume of trade then and now signifies nothing. The importation

and reëxportation of goods were a device to evade the then accepted principle of international law. England would not permit an American or any foreign vessel to carry goods directly from one of her colonies to one of her home ports. But under what was known as the rule of war of 1756 the ships of neutral powers might engage in indirect trade. Thus there was no law or custom which forbade an American merchant to import molasses into Boston from Jamaica. The rule of war just mentioned permitted him to carry molasses from Boston to London. By combining the two privileges the shrewd Yankee merchants earned a double freight on the same goods. The landing of the cargo and its entry at the custom-house were a formality which rendered the trade permissible and at the same time increased the profit. The intervention of the British courts of admiralty, moved thereto by the statesmanship of Pitt, to put a stop to what was no doubt a quasi fraudulent use of neutral rights, was an indirect cause of the war.¹ Sir William Scott, afterward Lord Stowell, in 1805 held that a neutral cargo carried from Martinique to Charleston and thence to London was lawful prize unless the neutral owner could prove by something more than the evidence of a custom-house entry that his original intention had been to terminate his voyage in an American port. This was a direct reversal of Sir William's own previous decisions, in 1799 and 1800, when he held that proof that goods had been landed and entered at the custom-house, and that the duties had been paid, was sufficient evidence of the *bona fide* nature of the importation.²

One cannot be surprised that while the foreign trade was growing rapidly and while agriculture was flourishing under the double stimulus of the demands of a rapidly

¹ See Hildreth's History, vol. ii. p. 564.

² Henry Adams's "History of the United States," vol. ii. p. 327; vol. iii. p. 44.

increasing population and of a profitable foreign vent — to make use of Hamilton's word — little attention should be paid to the introduction of new manufactures. There was ample employment for all disposable capital in the traffic which gave such large returns; there was no surplus labor to be drawn into new industrial enterprises. Occupation could be found for every man with a mechanical turn in building ships, in building and furnishing the new dwellings and shops required by population and trade, in blacksmithing, shoemaking, and other trades connected with the shelter, food, and clothing of the people. For all but their ordinary wants men were contented to buy abroad whatever manufactured merchandise was not produced at home. One must not forget, in considering this period, how few and simple were the real wants of the people as compared with the extent and variety of the articles now regarded as necessities; nor that most of the things which they consumed and which domestic artisans could supply were already protected by a duty sufficient to offset the cheapness of the foreign article.¹

There are two important exceptions to these statements. Evidently the protection, whether conferred by law or by natural situation, was not sufficient to induce the establishment of the woollen industry, for it is notorious that during the period of non-intercourse the lack of suitable material for clothing caused great hardship. In the address of the Farmers' and Manufacturers' Meeting, held May 14, 1827, it is mentioned that in 1812 it was found impossible to buy in the country \$6000 worth of blankets for the Indians, and that the Secretary of War asked Congress to suspend the non-intercourse law in order that he might buy them from Great Britain.² It is well known

¹ This is not a contradiction of the report cited (p. 115), to the effect that the existing duties were an injury rather than a benefit to manufacturers. The point in the report really was that the duties equally high on other goods neutralized the advantage the manufacturer should have.

² Niles, vol. xxxii. p. 240.

also that the clothing of the soldiers during the war of 1812 was procured by acts in violation of the laws against trading with the enemy, — violations at which the authorities connived.

The other exception is iron. Mr. Swank says in his report on the manufacture of iron and steel for the Tenth Census,¹ that it was not until our second war with Great Britain that duties were so increased as to be really protective of domestic industries against foreign competition. There is no doubt that during the period now under review the imports of raw and manufactured iron increased, and that the production of iron in this country made little or no progress. An industrial change was going on in which Americans took no part. New processes in iron-making, and the substitution of coal and coke for charcoal, enabled England greatly to cheapen the cost of production. Before that time Great Britain had imported pig and bar iron from the United States. There was no suggestion in any of the tariff propositions during the first period in our history that a duty on these crude forms of iron was desirable. It was supposed that the movement would be one of export rather than of import. When the change in the methods of manufacturing took place, the consequences appeared gradually, and apparently did not cause alarm among the domestic manufacturers, nor lead them to take concerted action for protection, nor even induce them to copy the methods of their rivals. Iron thus becomes an excellent illustration of our present point, — that the people were so engrossed in other things that they did not concern themselves much about manufactures.

The rates imposed by the tariff laws were low as compared with those which are now deemed necessary for purposes of protection. But the conditions under which the shipping trade was carried on increased the effectiveness

¹ Page 141.

of the duty beyond that which it had when the laws were passed. Hamilton had estimated the natural charges on imported goods, exclusive of duty, at from 15 to 30 per cent. As the danger of capture and confiscation at sea became greater, shipowners naturally required a larger profit on their cargoes, as has been remarked already. This fact must be considered in connection with another, namely, that in those times the largest part of foreign commerce consisted of ventures by the owners and masters of vessels. An American shipmaster at an English port, consequently, who was tempted to purchase as a part of his return cargo any goods on which a protective duty was laid, — shoes, glass, candles, snuff, soap, — had to decide whether he would be able to dispose of such merchandise at a price which would, as it were, indemnify him for past, and insure him against future, losses, and whether a cargo of goods upon which he would encounter no domestic competition would not be safer. The foreign merchant was in a still less desirable position, for his cargo would encounter a discriminating duty ten per cent. more than that on merchandise carried in American bottoms.

A second reason why the incidence of duties was not changed so as to give encouragement to the introduction of new industries was the absence of *push* on the part of the political leaders. The protective movement in the earliest period was, as we have seen, one by public men to promote what they conceived to be the general welfare of the country, and not at all one by manufacturers for their own interest. When Hamilton retired from the Treasury Department, there was no one to carry on the policy in behalf of manufactures which he had advocated so warmly. Oliver Wolcott, who succeeded him and was Secretary almost to the end of Adams's administration, was an able and faithful public servant, but not a constructive genius. Gallatin, Secretary of the Treasury during twelve years of the administrations of Jefferson

and Madison, was almost as capable and brilliant in financial matters as was Hamilton. But his mission was to pay off the public debt. The measures which he suggested and urged were designed on the one hand to increase the revenue, on the other to enforce economy in expenditures. During several years his energies were directed unavailingly to persuading Congress to make financial preparation for the impending war, or were wasted in warfare against a clique in the Senate which was resolved to break him down and destroy his influence. Later in life he became an earnest opponent of protection. At this period, as we have seen, his opinion favored protection; but he did not assert it aggressively.

A third reason for the quiescence of the protection sentiment was the complete lack of organization on the part of the manufacturers. The factory system did not exist in this country at the beginning of the period under consideration. It was in its earliest infancy at the close of the war of 1812. There were no large manufacturing establishments, no concentrated manufacturing communities, no concert or understanding among manufacturers. There was, therefore, no urgent representation to Congress of the desirableness of a broader policy — broader from a protectionist point of view — than that which had been outlined by Hamilton as a beginning of the encouragement of manufactures.

A stronger reason than any one of those which have thus far been mentioned, so much stronger in fact that the existence of any other has rarely been recognized by writers upon this period of tariff history, is that the foreign relations of the United States during the last half of the period brought about a situation more protective of American manufactures than any tariff short of a prohibitory duty could have been. Gross imports averaging 130 millions a year in the three years 1805 to 1807; a yearly average of but 64 millions in the four years follow-

ing, 1808 to 1811; and an average of but 38 millions during the three years of war;—these figures tell a tale of the destruction of the foreign trade and of exclusion of foreign goods from the American market which might account for almost any increase in the manufacture of commodities at home. Unfortunately the returns of imports are not full enough to enable us to determine with much precision the extent to which the embargo and the war promoted manufactures. Perhaps specific details are not needed to supplement the figures just given. The abundant supplies of foreign commodities before the years of commercial restriction had the effect to make them, or substitutes for them, necessities of life. When the supplies were cut off, there was a strong inducement to produce those substitutes. At all events, we know that the embargo and the war did cause the introduction of numerous manufactures on a larger scale than ever before; and that those who engaged in the business had a natural monopoly.

The history of the textile industries during this period has been written more carefully than that of any other class of manufactures. The woollen manufacture hardly had an existence before or during the Revolutionary War. In none of the tariff acts before the war of 1812 was any attempt made to encourage it. There were feeble enterprises here and there, but they generally resulted in disaster to those who engaged in them. "There was nothing in the prevailing conditions which gave much promise for expansion beyond the domain of the household, until the embargo of 1807 and the restrictive acts that followed. When these impediments to commerce finally culminated in the war of 1812, during which all foreign trade was practically arrested, the supplying of clothing from domestic sources became an imperative necessity; and throughout this entire period of embargo, non-intercourse, and war, there was no industry so prominent in the public

eye as the manufacture of wool."¹ A scarcity of the raw material prevented the industry from growing fast enough to supply the demand; and it was at this time that the importation of Spanish merino sheep began.²

The manufacture of cotton was not embarrassed by lack of the fibre; and the introduction of this industry during the period under review was one of the most striking events in the history of American manufacturing. Early attempts to construct spinning machinery had met with uniform failure. English laws prevented the secret of Arkwright's "water-frame" from being revealed to the world. Samuel Slater at last brought, in his head,³ a model of that machinery, and in 1790 the first successful spinning-frame was set up in Pawtucket. From that time the future of cotton manufacturing in this country was assured. But in the early days the mills were spinning-mills only. They produced yarn, which was sold to be woven into fabrics on hand-loom. The business was carried on in a small way. At the beginning of the embargo the total output of yarn by all the mills in the country was but a fraction of the production by one average cotton mill of the present day. The first notable expansion of the industry took place in 1813, when the machinery of the Boston Manufacturing Company was set in motion at Waltham. The great success of the company induced a more or less close imitation of its methods, and led to an exceedingly large growth of this branch of the textile industry. Moreover, and of vastly greater importance in its influence upon tariff development, it led to coöperation of manufacturers in the protection of their interests.

The industries thus far mentioned were not the only

¹ "The New England Wool Manufacture," by S. N. D. North, in "The New England States," vol. i. p. 207. Boston, 1897.

² *Ibid.* p. 209. See also Gallatin's Report, April 17, 1810, American State Papers, "Finance," vol. ii. p. 436.

³ He was searched before leaving England, and his drawn plans of the machinery were taken away from him.

ones that were created or fostered by the restraints upon commerce. An appendix to Gallatin's Report gives many communications to the Secretary relating to the state of manufactures of various sorts. Four thousand persons were employed in the manufacture of hats in Massachusetts alone. A million and a half hats were made, of which three fourths were sold beyond the State. Women's straw bonnets and straw hats were made in Norfolk County, in the same State, in great numbers. A girl in the town of Wrentham, on the Rhode Island border, found that she could make a straw hat as good as the imported ones then in fashion. Soon every girl in the region made her own hat, and the industry of making them for sale was quickly established and grew to large proportions. In Lynn one hundred thousand pairs of women's shoes were made every year. Massachusetts supplied cut nails to the rest of the country. Connecticut made tinware in great quantities from imported plates. Gallatin reported that the domestic production of a variety of articles — furniture, cabinet-ware, carriages, candles, coarse earthenware, and other things which have been already mentioned, exceeded the home demand, and left a surplus for exportation; and that the manufacture of other commodities — paper, numerous articles of tin, iron, copper, and brass, tools, cordage, window glass, jewelry, and clocks — was large enough nearly to meet the domestic consumption.

Although during the time of actual war, when all but an illicit foreign trade was virtually cut off, manufactures increased still further, and brought immense profits to those engaged in them, it must not be supposed that domestic wants were supplied. There were numberless articles which, something less than indispensable, something more than needless luxuries, were not to be had at any price. The stress of war and siege has often proved to people, accustomed to all the conveniences and com-

forts prescribed by fashion and refined taste, that the actual necessities of life are few. So it was with our fathers during the war. Some things they made for themselves, for others they employed the most available substitute, the rest perforce they dispensed with altogether. But their experience in those restricted years convinced them of two things: that they were able to engage successfully in manufacturing; and that it was the national duty that lay next before them to establish manufactures, in greater variety, on a larger scale, and on a firmer foundation than ever before.

The second of these lessons was impressed upon them sooner than they expected. The returns of the value of importations in three years show us how it was impressed upon them. The gross imports for the year ended September 30, 1814, were valued at \$12,965,000. The Treaty of Ghent was ratified on February 17, 1815. Although there was peace during only half the fiscal year 1815, the value of imports mounted to \$113,000,000. In 1816 it reached \$147,000,000; and the value of net imports, \$130,000,000, was almost double that of any year preceding the war. In short, the country was inundated with foreign goods. The products of English factories, accumulated because there was no sale for them during the long years of war, were poured in an overwhelming torrent upon the American market. One who reads the newspapers of the time can detect something which may be likened to the sharp cry of pain uttered by one who has received a stinging blow. "Peace and Prosperity" was a favorite toast in the joyful spring of 1815. "Our manufactures and our industrial independence are in the direst peril" was the burden of universal complaint in the gloomy closing months of the same year. Even so late as September, 1815, Niles wrote in a most hopeful tone, in his introductory editorial article for a new volume, regarding the prospects of manufactures. The

great importations did not alarm him. "It is true we have latterly received vast quantities of foreign goods, . . . but the country was completely exhausted of many things which the national industry, diverted by other objects, was yet incompetent to supply."¹ He had at that time no idea how seriously these heavy importations threatened the manufactures which he supposed to be happily and firmly established. Before the end of January, 1816, he was likening the duty of the government to the manufacturers to that of a mother toward her offspring. "There is certainly not much *profit* in raising children — a woman might earn more *money* if instead of nursing her infant and nourishing it as she ought, she were to cast it on the ground and apply herself to labor. But what would we think of a calculation like that? . . . I consider that the manufacturers of the United States stand to the government in the precise relation of an infant to its mother — if they are cherished they will repay, in the future peace and prosperity of the country, all that is done for them."²

For some months before the meeting of Congress, in December, 1815, the manufacturers, who saw their market throttled by foreigners, prepared to lay their case before the government, and to ask that the capital they had invested, in the belief that the unbroken policy of Congress toward them would not be abandoned, should be rescued from the peril which peace had unexpectedly brought upon it. The specific complaints were made chiefly, but not wholly, by the manufacturers of textiles. The makers of cotton goods, who were the most numerous and important, suffered more than any others. Great quantities of the cheapest sort of cotton goods made in India came into the country. The staple was greatly inferior to American cotton, and it was badly spun and loosely woven. Not only were the goods extremely cheap,

¹ "Register," vol. ix. p. 2.

² *Ibid.* p. 365.

but they were much undervalued at the custom-houses. A memorial by wool manufacturers reported that "under the old duties previous to the war there was not encouragement enough to introduce the woollen manufacture, so that it appears certain that these duties would not now maintain it. Under the present duties it has languished, and in a considerable degree declined since the peace." A firm of manufacturers of chemicals at Salem, Massachusetts, made a highly successful beginning during the war, and produced large quantities of Roman vitriol, sulphuric, nitric, muriatic, and other acids, lunar caustic, calomel, corrosive sublimate, red precipitate, etc., and derived considerable profits from the business. There was no duty on any of these articles. In December, 1815, two entire cargoes of sulphuric acid arrived in the United States, and threatened the complete extinction of the manufacture in this country.

To such specific complaints as the foregoing were added numerous general assertions that the manufactures established at such cost, greatly to the advantage of the country in its hour of sharp need, were to be ruined by English competition. General or specific, they found ready listeners and earnest sympathy in every part of the country.¹

¹ It will illustrate the universality of the sympathy to quote a letter written by Thomas Jefferson to Benjamin Austin, of Boston, dated January 9, 1816: "We have experienced what we did not then believe, that there exists both profligacy and power enough to exclude us from the field of interchange with other nations; that to be independent for the comforts of life we must fabricate them ourselves. We must now place the manufacturer by the side of the agriculturist. The former question is suppressed, or, rather, assumes a new form. The grand inquiry now is, Shall we make our own comforts or go without them at the will of a foreign nation? He, therefore, who is now against domestic manufactures must be for reducing us, either to a dependence on that nation, or to be clothed in skins, and live like wild beasts in dens and caverns;—I am proud to say I am not one of these. Experience has taught me that manufactures are now as necessary to our independence as to our comfort; and if those who quote me as of a different opinion will keep pace with me in purchasing nothing foreign, when an equivalent of domestic fabric can be obtained

Probably no Congress ever assembled in a frame of mind more favorable to the policy of protecting manufactures than the Fourteenth, which began its first session on December 4, 1815. It is desirable that we first review briefly the economical and political situation, which will throw light upon some features of the tariff discussion that took place. When the war began, the public debt amounted to 39 millions; at its close, the debt was 120 millions. Although the country was still at war during a part of the fiscal year that ended September 30, 1815, the revenue was more than sufficient to pay the ordinary expenses of the government and to meet the interest on the public debt. The expenses of the military and naval establishments were provided for by loans and issues of Treasury notes. It was evident, therefore, that the revenue in a full year of peace would be more than sufficient to satisfy all charges and to meet the demands of the sinking fund. Secretary Dallas estimated a deficit of about three millions in 1816; but inasmuch as the necessary payment for that year on account of the public debt was more than twenty-three millions, — one sixth of the whole debt, — there was in reality to be an exceedingly large surplus of income above the ordinary expenditures. There was in no quarter an expectation or desire to pay off the debt at such a rapid rate as was implied in the estimate. A general reduction of taxation was the policy recommended by President Madison and the Secretary of the Treasury; it was the foreordained policy of Congress; it was expected and demanded by the people. The President said in his annual message that the situation was such as to "justify an immediate alleviation of the burdens imposed by the necessities of the war." The Secretary specifically recommended a reduction of the direct tax by

without regard to price, it will not be our fault if we do not have a supply at home equal to our demand, and wrest that weapon of distress from the hand which has so long wantonly wielded it."

one half, — to three millions, — and a total repeal of the internal duties on domestic manufactures. Congress addressed itself at once to the financial questions before it, and devoted the most of the session to a complete revision of the national taxing system.

It is important to remember how completely the attitude of parties on all the great questions confronting the nation had been changed since the days of Washington and Adams. The Republicans stood virtually where the Federalists stood when parties first ranged themselves. Some of the Federalists, satisfied with the triumph of their principles under the administration of their old opponents, were now allied with the government; the rest found themselves opposing their former principles, driven to that position partly by the necessity of applying them to new and inconvenient circumstances, partly from the sheer habit of opposition. The Republicans were now the national party, the upholders of the majesty of the Union, the champions of a bold and progressive policy. The Federalists, by their opposition to the war and by their responsibility for the much-maligned Hartford Convention, had placed themselves upon the narrow platform which had once been represented by the Virginia and Kentucky Resolutions. Jefferson himself began unconsciously an approach to the Federalist position, but did not proceed far on the road. Madison, and still more completely Monroe, passed over and occupied the enemy's camp. In the early days of the government there was no actual party division on the tariff question; but unquestionably the Federalists, with Hamilton at their head, were more zealous for the cause of manufactures than were the Republicans. All this had changed long before the year 1816. A Republican Congress ordered the reprinting of Hamilton's "Report on Manufactures." Republican committees took pains to proclaim their friendliness to the policy of protection. On the other hand,

the opposition to that policy was nowhere more strongly manifested than in Massachusetts, Federalist in politics and commercial by occupation. Accordingly, although the tariff was still in no sense a party question, it is true as a broad proposition that parties had exchanged positions as much on this issue as on any other. Certainly the Republican party as a whole stood forth as the champion of manufactures. The administration was ready to take the lead in engrafting the protective policy upon the fiscal system.

Madison, as we have seen, took a prominent part in the adjustment of duties in the act of 1789. Afterward, when the issues were joined between Hamilton and Jefferson, as an adherent of Jefferson he ranged himself usually with the opponents of protective duties in the discussions and divisions pending the acts of 1792 and 1794. But now he summoned Congress to the work of making a protective tariff in bold and clear language.

1816?
—
In adjusting the duties on imports to the object of revenue [he wrote¹], the influence of the tariff on manufactures will necessarily present itself for consideration. However wise the theory may be which leaves to the sagacity and interest of individuals the application of their industry and resources, there are in this as in other cases exceptions to the general rule. Besides the condition which the theory itself implies of a reciprocal adoption by other nations, experience teaches that so many circumstances must concur in introducing and maturing manufacturing establishments, especially of the more complicated kinds, that a country may remain long without them although sufficiently advanced, and in some respects even peculiarly fitted for carrying them on with success. Under circumstances giving a powerful impulse to manufacturing industry, it has made among us a progress and exhibited an efficiency which justify a belief that with a protection not more than is due to the enterprising citizens whose interests are now at stake, it will become at an early day not

¹ Seventh annual message. ("Messages and Papers of the Presidents," Richardson, vol. i. p. 567.)

only safe against occasional competitions from abroad, but a source of domestic wealth and even of external commerce. In selecting the branches more especially entitled to the public patronage, a preference is obviously claimed by such as will relieve the United States from a dependence on foreign supplies, ever subject to casual failures, for articles necessary for the public defence or connected with the primary wants of individuals. It will be an additional recommendation of particular manufactures where the materials for them are extensively drawn from our agriculture, and consequently impart and insure to that great fund of national prosperity and independence an encouragement which cannot fail to be rewarded.

The House of Representatives proceeded systematically in the consideration of the general financial problem. The whole subject was referred to the Committee of Ways and Means, appointed by Mr. Speaker Clay on the third day of the session, December 6, 1815. Mr. Lowndes, of South Carolina, the chairman, reported, on January 9, a complete scheme of finance, — except the creation of a national bank, which was in the hands of a select committee, — in a series of twelve resolutions preceded by an elaborate report. The resolutions adopted all the recommendations of the Secretary of the Treasury, with a single exception, namely, that the committee proposed to restore the *ante bellum* rates of postage, while the Secretary wished to retain the war rates. The propositions were discussed *seriatim* in Committee of the Whole, day after day, beginning on January 15, during nearly a month. The resolutions, as they were agreed to, were referred back to the Committee of Ways and Means, with instructions to report bills in conformity therewith ; and the bills, when reported, were promptly acted upon. The resolution relating to the tariff was as follows : —

10. *Resolved*, That it is expedient so to amend the rates of duties upon imported articles, after the 30th of June next, as that they shall be estimated to produce an amount

equal to that which would be produced by an average addition of forty-two per cent. to the permanent rates of duties.

It is to be remembered that the act doubling the duties on imports, approved July 1, 1812, was limited in its operation to one year after the conclusion of peace with Great Britain, and that it would accordingly expire on the 17th of February, 1816. It was proposed by the first resolution to continue the act until the 30th of June, 1816. The resolution was promptly adopted, and an act was passed in pursuance of it, which became a law on February 5. The act further provided that after the 30th of June there should be an additional duty of forty-two per cent. on the duties which should then exist "until a new tariff of duties shall be established by law." The proposition was to add forty-two per cent. to the permanent duties, those, namely, which existed prior to the war; and it was therefore a reduction of twenty-nine per cent. upon the war duties. Inasmuch as it was the avowed and the inevitable policy of all parties to adapt the customs laws to the conditions established by the resolutions of the House upon other branches of the taxation problem, the tenth resolution was postponed until the last. When all the rest had been disposed of, it was taken up, on the 9th of February, and agreed to without a division, and without a word of debate.

The basis of the scheme embodied in the bill prepared by the Committee of Ways and Means in pursuance of the resolution was furnished by the Secretary of the Treasury. The committee and Mr. Dallas dexterously availed themselves of a resolution passed by the House of Representatives on February 23, 1815, requesting the Secretary to suggest a plan of duties. The report was all ready, and was sent to Congress on February 12, 1816,¹ three days after the House agreed to levy duties averaging

¹ American State Papers, "Finance," vol. iii. p. 85.

forty-two per cent. above the permanent rates. It is characterized by a bold and confident tone. The propriety of laying protective duties is assumed ; and the experience of all successful and wealthy nations is cited to sustain the policy. Mr. Dallas adopted practically the principle laid down by Hamilton, by dividing the several kinds of manufactures into three classes. The first, consisting of those articles which the United States produced in amounts sufficient to satisfy the home demand, he would protect absolutely by a prohibitory duty. The second class comprised those in which less progress had been made, but which might, if duly encouraged, reach the point of supplying the whole country ; on these he would lay a comparatively heavy duty, for purposes both of revenue and of protection. The third class, made up of articles produced by domestic manufacture in small quantities or not at all, he proposed to tax with a purely revenue duty. In the second class he placed all the coarser manufactures of cotton and wool, upon which the chief discussion in Congress afterward took place. With respect to the third class of manufactures he remarked that "the present policy of the government is directed to protect, and not to create manufactures."

The Committee of Ways and Means seems to have been made up with a strong majority of protectionists, but not with a majority of strong protectionists. Although Mr. Lowndes, of South Carolina, the chairman, accepted frankly and fully the principle of protection, his views as to the rates of duty necessary to carry out the policy were much more moderate than those which the manufacturers themselves and their more earnest friends entertained. Under his leadership the committee cut down the rates on several important articles — notably on textiles — below those recommended by the Secretary of the Treasury ; and as will be seen, he voted to reduce some of the rates reported by the committee. But, in general, he stood by

the policy of protection loyally, and opposed by voice and vote the hostile amendments offered by John Randolph, who led the opposition to the bill.

The House began the consideration of the new tariff measure on the 20th of March. The bill passed through the Committee of the Whole on March 28; the amendments were considered in the House from the 2d to the 8th of April, when the bill was passed. The Senate considered it from the 15th to the 20th of April, on which day it was passed with amendments; to which the House concurred on the 25th; and the President approved the act on the 27th. It appears from this brief history of the measure that a period of thirty-nine days covers the consideration of it by both Houses of Congress and by the President.

It has been said already that the chief debate took place upon the cotton duties. The committee proposed a duty of twenty-five per cent. upon cotton and woollen goods of all descriptions. The bill contained, however, this important proviso:—

Provided, That all cotton cloths, or cloths of which cotton is the material of chief value (excepting nankeens imported direct from China), the original cost of which at the place whence imported shall be less than twenty-five cents per square yard, shall be taken and deemed to have cost twenty-five cents per square yard, and shall be charged with duty accordingly.

This was the famous principle of the "minimum," which excited great opposition at that time and for many years afterward. It was devised and urged upon Congress by Mr. Francis C. Lowell, of the Boston Manufacturing Company, the inventor of the power loom which made that company so highly successful. The situation of the cotton manufacturers was peculiar. With the exception of the Boston company, none of them wove their own yarn. They were spinners only, and sold yarn to be

woven upon hand looms. The introduction and success of power looms in England had resulted in such a cheapening of cloth that the duties existing were no bar to the importation of large quantities of English goods, which could be sold at a profit for a price less than the hand-woven goods of southern Massachusetts and Rhode Island. Mr. Lowell and his friend and fellow manager of the Boston Manufacturing Company, Mr. Nathan Appleton, visited Rhode Island early in 1816 and found not a spindle turning except a few in the old Slater mill. He urged them to turn their attention to the power loom, and assured them that they would find the existing duties sufficiently protective against English competition. But neither of them could stand against the competition of the cheap India cottons. These goods were made of extremely short staple, costing but fourpence a pound, and were manufactured by workmen who earned but fourpence a day. The average cost of such goods in India was but about nine cents a yard, a fraction only of the actual cost of producing the strong and serviceable goods woven in this country. No wonder Mr. Appleton and Mr. Lowell found the Rhode Island spinners "sad and despairing." The petitions to Congress, in which most of the American manufacturers united, asked for a total prohibition upon the importation of these goods. Mr. Lowell proposed the minimum valuation and a levy of the duty upon that. The effect would be a duty of fully one hundred per cent., which, together with the freight, insurance, interest, and other charges, would operate effectually to keep the India goods out of the American market. At the same time it would stop the undervaluation of English goods, which was already becoming a serious grievance.

Immediately after the tariff bill had been read through in Committee of the Whole, Mr. Strong, of Massachusetts, moved to amend by increasing the duty on cotton goods to 33½ per cent., and that on woollen goods to 28 per

cent. This was the original proposition of the Secretary of the Treasury. A debate began immediately upon the general subject of protection. Unfortunately no minutes were taken of the first speeches. Mr. Strong is reported, in the "Annals of Congress," as having urged "the expediency of making the duties on the imported articles higher than was proposed by the bill." Mr. Lowndes, who replied to him, is said to have taken "a clear and comprehensive view of the subject of protecting duties generally, supporting the system proposed by the bill, and stating the motives which induced the Committee of Ways and Means to report a smaller duty on the articles named than was recommended by the Secretary of the Treasury." The statement is sufficiently vague and uninforming; but the later reports are more full and satisfactory.

On the following day, Mr. Strong withdrew his amendment in order to allow Mr. Clay to propose one affecting cotton goods only, on which he proposed to lay a duty of $33\frac{1}{3}$ per cent. Mr. Clay made the motion, he said, in order to try the sense of the House as to the extent to which it was willing to go in protecting domestic manufactures. He assumed that there was no difference of opinion as to the propriety of such protection, but only on the degree to which encouragement should be carried. He spoke at length, urging ample protection. After speeches in opposition by Mr. Smith, of Maryland, — who was in favor of protecting domestic fabrics, but differed from Mr. Clay as to the extent of protection, — and by Mr. Lowndes, the amendment was rejected by a vote of 51 to 43. The venerable Timothy Pickering,¹ of Massachusetts, then moved to strike out the "minimum" clause. After a long debate, not reported, in which Mr.

¹ Mr. Pickering had been Postmaster-General, Secretary of War, and Secretary of State in the cabinets of Washington and Adams, and eight years — from 1803 until 1811 — a senator in Congress, and was now serving his first term in the House, at the age of seventy-one years.

Lowndes opposed the amendment, it was negatived, eight or ten members only voting in favor of it.

Mr. Clay now brought forward another amendment increasing the duty on cottons to thirty per cent., and the whole question of the degree of protection proper to be given was discussed again at great length. Mr. Ingham, of Pennsylvania, a member of the Committee of Ways and Means, supported the amendment in an elaborate argument against the three objections he had heard to the policy of ample protection, namely, "first, that the amount of duty proposed was incompatible with the fiscal policy of the government; second, that the high duties on cotton and woollen goods will injure the navigating interests of the United States; third, that we ought to confine our protection of manufactures exclusively to articles of indispensable necessity in time of war, and to articles of first necessity in time of peace." Mr. Ingham said that the first point was raised unexpectedly, "because the great principle involved in this bill was not a revenue proposition. . . . Its great primary object was to make such a modification of duties as would give the proper support to the agriculture, manufactures, and commerce of the country. The revenue is only an incidental consideration, and it ought not to have any influence in the decision upon the proposition before the Committee." He cited the advantage to agriculture in securing a home market for its produce, and the imminent peril to the hundred million dollars invested in manufactures in recent years, as reasons for granting ample protection. The revenue question must be regarded as a minor consideration. On the second point, he did not believe that commerce could be saved by the defeat of the bill or hurt by its passage. The true remedy was for the shipping to nurse the coasting trade and the trade with South America. Upon the third point, it would not be possible for any two persons in the nation entirely to agree what were

and what were not articles of necessity, and therefore it was not possible to draw the line. Many other branches of the subject were taken up and discussed in this interesting speech. Other gentlemen followed in the debate, but their remarks are not reported, after which Mr. Clay's amendment was adopted by a vote of 68 to 61.

Several motions to amend were next made and successively withdrawn. Mr. Smith, of Maryland, who had been prominent in the opposition to a high duty on cotton goods, "with the view of encouraging and protecting the great quantity of machinery for rolling and slitting iron" moved to increase the duty on imported iron sheets, rods, and bolts from \$1.50 to \$2.50 per hundredweight. The motion was carried without a division.

Mr. Huger, of South Carolina, believing that no protection was necessary to encourage the production of raw sugar, by which large fortunes were made, moved to reduce the duty on brown sugar from four cents to two and a half cents per pound. This motion brought to his feet another member of the Committee of Ways and Means, Mr. Robertson, of Louisiana, who also had opposed the high duty on cottons. He denied that great fortunes had been made, argued that sugar was peculiarly an article to which protection should be granted, and protested against the idea which he thought was prevalent that every other interest must give way before that of the manufacturer. Mr. Lowndes supported Mr. Robertson, and intimated that the four cent rate was rather too low than too high. Mr. Calhoun also favored the high duty on sugar. None of the speeches in favor of a reduction are reported. They were all made by Northern members; those against the amendment were all made by Southerners. The amendment striking out four cents was adopted, 62 to 55. An attempt was made to fix the rate at five cents, which was defeated; and then, on motion of Mr. Clay, the duty was fixed at three and a half cents, — 64 to 58.

Various amendments in which no principle was involved, to change the proposed duties on lump sugar, gunpowder, copper sheets, lead, iron and steel wire, clocks, and cotton laces, were quickly disposed of. Mr. Ingham brought forward a proposition to establish a minimum valuation of unbleached and uncolored cotton yarn at sixty cents a pound, and of bleached and colored yarn at seventy-five cents a pound, which was agreed to.

Daniel Webster, then of New Hampshire, now offered again an amendment which he had once proposed and withdrawn, that the thirty per cent. duty on cotton goods should be operative for two years; that for the next two years the duty should be twenty-five per cent., and that thereafter the rate should be twenty per cent. Mr. Clay moved to amend the amendment by establishing the thirty per cent. rate for three years and the twenty-five per cent. for one year. Some interesting points were made upon this last proposition. Mr. Lowndes accepted Mr. Clay's motion as one which, although not perfectly correct, would produce a return to correct principles. Mr. Root, of New York, thought that the proposition was, in effect, one to sustain the manufacturers for a short time and then leave them to their fate; to give a bounty of ten per cent. to those already established and discourage the erection of new mills. Mr. Hulbert, of Massachusetts, said that he had consulted with gentlemen acquainted with the subject, and learned that the manufacturers would be satisfied with Mr. Clay's motion if the minimum were retained. Mr. Webster replied that he had been assured that the manufacturers would be contented with thirty per cent. for one year; to which Mr. Hulbert retorted that the individual consulted by Mr. Webster, though intelligent and honorable, was a manufacturer of large capital, and could better stand under the operation of the amendment than many others whose means were limited and who had not got well established. There is no evidence

that enables us to identify either of the informants of these two New England members. A not improbable guess might be made, but it could be no more than a surmise. The fact that manufacturers were on the spot to guide members in coming to a decision is worth noting, inasmuch as it seems to have been the first instance of interested parties going in person to Washington to promote the passage of particular tariff schedules.

Mr. Ward, of Massachusetts, made the point that a high duty for a short time would merely place a bounty on the foreign goods already imported, with which the country was overstocked. Mr. Clay said that the object of protecting manufactures was that we might eventually get articles of necessity made as cheap at home as they could be imported, and thereby to produce an independence of foreign countries. Three years he thought sufficient to place our manufactures on this desirable footing. Other members who took part in the debate, including Mr. Webster and Mr. Calhoun, expressed their friendliness to manufactures and to the policy of protection, but insisted that twenty per cent. was ample. Mr. Ross, of Pennsylvania, was the only member who took a different view. The distress of the manufacturers did not move him. The failure of some of them was no reason for excessive duties. Some individuals of all professions were unfortunate in the best times. Moreover, the occupation of manufacturing "had a tendency to degrade and debase the human mind." He was in favor of such manufacturing as was conducted in families; "any other would prove destructive to the liberties of this republic, by combinations effecting a revolution in this House and in the government." Mr. Clay's motion was, after this speech, but perhaps not in consequence of it, lost by a vote of 47 to 61, and Mr. Webster's amendment was adopted by a large majority.

The committee next turned its attention to woollens.

Mr. Lowndes offered an amendment which would leave the twenty-five per cent. duty in force for two years only, then to be reduced to twenty per cent. It was modified by fixing the higher duty for three years, and adopted. Two other amendments hostile to protection of woollens were offered, debated briefly, and rejected. Consideration of the duties on many other articles involved nothing of general interest, and was only once enlivened, by a passage between Mr. Robertson, who wished the duty on claret to be low to save his people from the whiskey of Kentucky, and Mr. Clay, who regretted that the people of Louisiana had the poor taste to prefer bad claret to good whiskey.

A motion was made to increase the duty on iron in bars from 75 cents to \$1.25 per hundredweight. After a discussion, which is asserted to have been very long, but which is not reported, the motion was overwhelmingly defeated. The advocates of a low duty, perceiving their advantage, moved to reduce the duty to 50 cents. Mr. Ross supported this motion, and remarked that he "wished that the ambassadors from the cotton factories had at once made a treaty with the Committee of Ways and Means which the House might have swallowed, and have left the other manufactories to themselves, and not be burdening the people in every possible way under the plea of protection." A further motion was made to reduce the duty to $37\frac{1}{2}$ cents, which was rejected; and then, on motion of Mr. Webster, the rate was fixed at 45 cents. It was a bad defeat for the iron manufacturers and for the policy of protection. The only other amendment important to notice in the passage of the bill through Committee of the Whole was one to reduce the duty on unmanufactured wool from fifteen to seven and a half per cent. This was adopted, but the duty was afterward struck out altogether by the Senate. On the 28th of March the committee rose and reported the bill and amendments to the House.

The bill came up in the House on April 2, on the question of agreeing to the amendments made in Committee of the Whole. The first vote was on the reduction of the duty on wool, which was adopted by a vote of 73 to 42. The affirmative votes were given by the radical opponents of protection and by the great body of the Northern members, the negative chiefly by members from the South and West.

The whole question of the duty on cottons now came up on a motion by Mr. Forsyth, of Georgia, to make the duty twenty per cent. from the 30th of June. The motion was defeated by a vote of 69 to 65; whereupon Mr. Wright, of Maryland, offered a motion to the effect that no member who was interested in a cotton mill was entitled to vote on the question. The motion was subsequently withdrawn, but for some unexplained reason Mr. Forsyth's amendment came up again, although it had once been defeated. It was modified, at the suggestion of Mr. Hardin, of Kentucky, so as to provide that the duty should be twenty-five per cent. for two years, and thereafter twenty per cent., and was carried by a vote of 84 to 60. This was one of the most interesting and important divisions during the whole progress of the bill through the committee and through the House. It revealed the fact that the members from New England were divided in the proportion of two to one against the higher duty; that in the four States of New York, New Jersey, Pennsylvania, and Ohio, the members were four to one for high protection (36 to 8); and that in the States south of Pennsylvania they were almost five to one against high protection (53 to 11). Another long debate ensued, at the conclusion of which a motion to continue the twenty-five per cent. duty for three years was adopted, and the amendment to the bill as thus amended was agreed to by a large majority.

The yeas and nays were called on the amendment reducing the duty on iron to forty-five cents per hundred-

weight, and the amendment was concurred in by a vote of 89 to 51. The next question on which the members recorded themselves was that of reducing the duty on sugar. A motion was made to cut it down from three and a half cents a pound — four cents, it will be remembered, was the rate reported by the Committee of Ways and Means — to two cents. The motion was adopted by 86 yeas to 56 nays. It is interesting to note that twenty-eight members of the fifty-one who voted against reducing the iron duty voted for the low duty on sugar. Thirty-four of the negative votes came from the Southern States, which mustered only eleven members on the side of protection to cotton manufactures.

The cotton question hereupon was brought before the House in a new phase. Mr. Pickering moved an amendment that all India cottons imported within one year from the 30th of June, 1816, be admitted on the payment of a duty of twenty-five per cent. on their cost in India with the usual addition of twenty per cent. This would make the duty thirty per cent. — exactly the amount of the "double duty" then in force, under which the country had been flooded with these goods. Mr. Pickering represented the then important commercial town of Salem, which was greatly interested in the India trade. He was warmly supported by his colleague, Mr. Ward, and by Mr. Webster, who advocated it as an act of strict justice to the shipowners who had embarked in the business. John Randolph's voice was raised on this question, apparently for the first time during the tariff debate. At all events, the reporter does not mention him as having previously uttered a word. But his vote was always against the high and in favor of the low duty. Moreover, from this time to the end of the discussion he spoke often and at great length. On Mr. Pickering's amendment he declared his unwillingness to sacrifice the *bona fide* American merchants to what he called the mushroom interest which had

sprung into favor, and argued violently against the object of the bill, which he characterized as a scheme of public robbery. He concluded by moving the indefinite postponement of the whole subject. This motion he afterward withdrew. Mr. Pickering's amendment was modified and adopted by a large majority. It provided that cotton piece goods imported in American vessels which should have sailed from the United States before the 1st of February, 1816, and which should arrive before the 1st of March, 1817, the cost of which should be less than twenty-five cents a square yard, should pay a duty of thirty-three and one third per cent. on the cost, with the usual twenty per cent. added. Several members who had been most earnest in advocating protective duties spoke in favor of the amendment as being fair and reasonable.

The consideration of the amendments reported by the Committee of the Whole having been completed, Mr. Randolph moved to strike out the minimum clause with reference to cotton goods. There was another protracted debate on this proposition, but the only speech which is reported in full is that of Mr. Calhoun, whose subsequent change of opinion renders important his remarks at this time. He had previously, on January 31,¹ expressed his views briefly upon the subject, which he now entered upon more fully. He began by saying that the previous debates had been on the degree of protection which ought to be given to the cotton and woollen manufactures, all professing to be friendly to those infant establishments and to be willing to extend to them adequate encouragement. The present motion was based on the ground that manufactures ought not to receive any encouragement, and its adoption would leave the cotton establishments exposed to a competition which it was on all sides acknowledged they were not capable of meeting. He maintained that upon the decision of this question rested

¹ "Annals of Congress," first session, Fourteenth Congress, p. 837.

the security of the country. Until lately commerce and agriculture constituted almost the only, and were still the principal, sources of wealth. Their prosperity depended upon a foreign market. In case of war, commerce would be annihilated and the outlet for agricultural products would be closed. Mr. Calhoun dwelt at length upon the mutual interdependence of commerce, agriculture, and manufactures, and declared that all were necessary to the production of national wealth. "When our manufactures are grown to a certain perfection, as they soon will under the fostering care of government, we will no longer experience these evils. The farmer will find a ready market for his surplus produce, and, what is of almost equal consequence, a certain and cheap supply of all his wants. His prosperity will diffuse itself in every class in the community."

For the evils arising out of a lack of manufactures he saw but two remedies; the construction of a strong navy to open the way to markets, and the policy embodied in the pending bill. But the country had not the means to adopt the first remedy, which, moreover, required time. On the other hand, there was much commercial capital, and the attention of its possessors was already directed toward manufactures. The restrictive measures of the past and the state of war had introduced the manufacture of cotton, although not intended for that purpose. More recent conditions had, however, caused a great pressure upon these establishments. Should the present owners be ruined and the workmen disperse and turn to other pursuits, the country would sustain a great loss. In answer to the objection that protecting duties would be injurious to the maritime interest, he urged that it would not long have that effect. The coasting trade, which was wholly in our hands, would be benefited. He rejected the argument that manufactures destroy the physical and moral power of the people; and suggested that if the

heavy taxation, the pauperism, and the oppressive labor laws of England were insisted upon as a direct result of the fact that England manufactured more than any other country, it would be equally just to refer to the same cause "her courage, spirit, and all her masculine virtues [doubtless the confusion of sex was a slip of the reporter], in which she excels all other nations with a single exception,—he meant our own,—in which we might without vanity challenge a preëminence!" Mr. Calhoun closed with a powerful statement of the benefits to flow from the policy he advocated in binding together our widely spread republic, increasing mutual dependence and intercourse. The fact that it would make the parts adhere more closely, that it would form a new and most powerful cement, far outweighed in his mind any political objections that might be urged against the system.

A motion was now made to reduce the minimum to fifteen cents a square yard. This having been rejected by a vote of 66 to 72, Mr. Randolph withdrew his motion to strike out the minimum clause. Another motion was made to fix the duty on cotton and woollen goods at twenty per cent. This also was rejected, 51 to 76. After an amendment intended to reduce the duty on cheap woollens to twelve and one half per cent. had been rejected, still another attempt was made to reduce the duty on cottons to twenty per cent.,—this time by striking out the word "five" in the clause "twenty-five per cent." The yeas and nays were called again, and the amendment was defeated, 52 to 84. This was followed by a last motion to strike out the minimum clause, by Mr. St. George Tucker, of Virginia,—also rejected by 51 to 82. This vote may be taken as the best test during the whole proceedings as between the protectionists, moderate and extreme, and the opponents of protection. Forty-five members of the House were not recorded, of whom no less than sixteen were New England members. There is reason to fear that some of them, includ-

ing Daniel Webster and Timothy Pickering, "dodged" the vote. In fact, there was but one member of the Massachusetts delegation who is recorded against the "minimum" clause, although on most of the less important divisions a majority of the members from that State ranged themselves against protection or for low duties. The division as a whole shows nearly the same characteristics as that analyzed on a previous page, save that New England now gave 17 votes for the minimum and 7 against it. The middle States, New York, New Jersey, Pennsylvania, and Ohio, gave 45 votes for the minimum and 4 against. The South gave 20 votes for it and 40 against it.

The bill was at last ordered to be engrossed and read a third time, and on the 8th of April the question was, Shall the bill pass? Mr. Randolph interposed a motion to postpone its further consideration until December. The motion was rejected decisively, 47 to 95, whereupon Mr. Randolph took the floor and made a speech three hours in length against the bill. But all things have an end. At last the yeas and nays were called on the final question, and the bill was passed, yeas 88, nays 54.

The history of the bill in the Senate is extremely uninteresting. Indeed, not a word of the debate has been preserved. The protectionists were much stronger in the Senate than in the House, and all the hostile amendments were defeated by a heavy majority. A proposition to strike out the minimum clause was rejected by a vote of 10 to 22. Senators Mason, of New Hampshire, and Gore, of Massachusetts, were the only Northern members in the minority. No important amendment was made in the Senate, save that the duty on sugar was raised from two and one half to three cents a pound. On all the other articles upon which the long controversies in the House had taken place, the rates and the provisos were left precisely as the House had determined. The bill was passed by the Senate without a division; and when it was returned to the

House the minor amendments were concurred in. The yeas and nays were called on the increase in the sugar duty, and the Senate amendment was accepted, 54 against 48.

The foregoing summary of the history of the act of 1816 on its passage through Congress, dreary as it is and unenlivened by any incidents of a picturesque or dramatic nature, is necessary to a discussion of the character of the law, which is virtually an examination of the question whether Congress carried out the purpose with which it assembled. The act of 1816 has been held by those who deny the protective character of the act of 1789 to be the first protective tariff. Was it, then, a protective tariff?

There is no room for doubt that an exceedingly strong majority of Congress was at the outset in favor of substantial encouragement to home industry. The assertion was made repeatedly, and no one took exception to it, that all were in favor of that policy, and that the only difference was as to the degree of protection it was advisable to extend. A certain amount of hostility to manufactures developed during the debate, but it was not strong enough to control the action of the House save when the division was close between the moderate and the high protectionists. John Randolph was the only prominent member who was all the time hostile to protection; but indeed he opposed everything. It would be easy to show that more than three fourths of the members of the House of Representatives voted at least once in favor of rates for which there was no other excuse than a desire to protect some industry by means of duties.¹

Yet we have seen that on all the strongly controverted

¹ Randolph's motion, Jan. 22, 1816 (the bill to continue the war "double duties" until June 30 being under discussion), to add five cents a bushel to the duty on coal, "with a view to encourage the home trade in that article," is not necessarily to be taken as a fall from grace on the part of the most thoroughgoing free-trader, in the broadest sense, of his time; but it is an act that does not explain itself.

questions the advocates of low duties carried their point. The iron-makers, complaining of the rate of duty on bar and rod iron, reported by the Committee of Ways and Means and asking for a higher rate, saw the specific duty proposed by the committee cut down forty per cent. The sugar-growers, asserting that four cents a pound was too low, were granted but two and a half cents, by the House; they afterward recovered half a cent from the Senate. The wool duty reported by the committee was first reduced one half and then rejected altogether. Woollen goods, on which the Secretary of the Treasury recommended twenty-eight per cent. duty, came out of the conflict better than most of the articles on which there was contention, for Congress granted twenty-five per cent. for three years and twenty per cent. thereafter.

It was on cotton goods that the protective policy met the most serious disaster. The programme had been, a duty of thirty-three and a third per cent. without limit as to time, and the minimum clause which would shut out India cotton altogether. The cotton manufacturing interest rescued from the contest merely a duty of twenty-five per cent. for three years and twenty per cent. thereafter; and the minimum clause, which was practically suspended for the first of the three years. Thus Congress deliberately voted to tolerate for a year longer the very evil which caused the distress of the cotton manufacturers, and closed most of their mills, which was, indeed, the chief occasion of the strong protectionist movement. It saw not only the cotton manufacture but many other industrial interests suffering keenly from a foreign competition which the existing customs duties were not sufficient to ward off from the home producers; and it undertook to protect them by a new tariff much lower than that under which they had met their disaster. This statement is sufficient to show that the act of 1816 was not what the members of Congress who voted for it intended it should

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be, for they certainly supposed that they were passing a moderately protective measure. The experience of the next few years showed them their mistake. It must be admitted that at that time it required political courage and nerve to advocate such duties as would be actually protective. The revenue was redundant. The terms on which the debt had been contracted did not admit of its being paid off so fast as to exhaust the surplus. Therefore it was absolutely necessary to reduce the rates of duties and thus increase the imports, or to raise the duties and in that way to check importations and revenue. The second way was the logical and the only effectual method of protecting manufactures, but there was no one bold enough to advocate it. The method chosen, that of a reduction of taxes, might have been half effective if low duties on other articles had been combined with extremely high duties on the goods which competed with American manufactures. Even that expedient was not adopted. To all intents and purposes the reduction on manufactured articles was nearly as great as the average reduction on the whole list. The consequences of this policy were, as we shall presently see, to a certain extent veiled by circumstances arising out of the state of the country. It is due to those extraneous conditions rather than to the working of the act itself, that the tariff of 1816 is classed as a protective measure.

It may be asked what were the causes that led Congress, consciously or unconsciously, to forego its purpose of encouraging manufactures by duties fixed by that consideration only. One of those causes appears in connection with the adoption of Mr. Pickering's amendment postponing for a year the operation of the minimum clause. The shipping interest was at that time of much greater consequence than the manufacturing interest. If the country was grateful to those who had supplied its wants by engaging in new industrial enterprises, it had still

greater reason for gratitude toward the merchant marine, which had furnished sailors and had fitted out the bold and successful privateers. It was all well to foster the young industries, but they must not be nourished at the expense of the great mercantile communities. So far as the New England members were concerned, the votes of some of them cannot be explained fully without a consideration of partisan politics. The Federalist party was virtually dead; but there were still a few members of Congress who had been elected as Federalists. The Republicans in control of the government had gradually, and now almost completely, adopted the fundamental principles of their defeated opponents, and none more thoroughly than the principle of protection. The lingering Federalists in Congress were driven into a rejection of the doctrine so ably set forth by their former great leader, Hamilton, not merely by their local interest in favor of shipping, but by the natural tendency to oppose whatever the ruling party proposed.

The other reason, perhaps not the only one, was the jealousy of the partisans of particular industries and their intolerance toward the interests of distant States. The difficulty is illustrated most clearly by the objections of Northern members to a protecting duty on sugar and of Southern members to giving protection to cotton manufactures. On the question of protection to iron the North and the South united against the Middle States.¹ As has been said already, there were some members who voted consistently for protective duties, whether the proposition was to levy them upon articles in which the communities they represented were interested, or not. There was a smaller number of members who voted with equal steady-

¹ The vote was 89 to 51 for the low duty. The affirmative vote was made up of 30 New England members, 49 Southern members, 3 from Ohio, 5 from New York, and 2 from Pennsylvania; the negative of 4 from New England, 12 from the South, 1 from Ohio, and 34 from New York, New Jersey, and Pennsylvania.

ness for every amendment that would reduce a duty, in cases where protection was not involved as well as where protection was the sole question at issue. The votes of the other members were shifted from the one side to the other according to the individual judgment of each man upon the matter under consideration. Thus there was nothing of that union of forces in favor of a general policy which is seen in more recent times, which leads men to vote even against the interests of their constituents in certain cases, and thus carries the policy into effect upon a great variety of matters, not one of which, standing by itself and decided by selfish interest alone, might have commanded a majority. Such a union, by those who are opposed to the end which it accomplishes, is usually termed "log-rolling"; it seems to those who favor that end merely the concert of action which results from identity of political principle on the part of men who will not be swerved from the principle by selfish and sordid motives. Whether the one or the other be the correct view, it is evident that unity of purpose in a general plan was absent, and that the lack of it caused the failure of Congress sufficiently to protect the manufactures which confessedly stood most in need of it. One might even now recur to the arguments presented frequently in the debates upon the act of 1816, and hold that adequate protection for a few years at that time would have established manufactures in this country so firmly that they might have ceased to need further encouragement and continued defence against foreign competition. It is certain that the industries then in peril of extinction were suffered to languish by the establishment of rates of duty below the point where they could obtain control of the markets; and that before Congress came to their rescue the conditions had been so changed as to render their contest for existence and for supremacy over their foreign rivals much more difficult. Moreover, the tariff question became com-

plicated with other political issues in such a way as to render the general economical policy of the government dependent upon considerations with which it had no vital or necessary connection, liable to be suddenly changed with the advent of a new administration, and from both causes ineffective. It is possible to hold that if the purpose with which the Fourteenth Congress assembled had been carried into execution with spirit and thoroughness the effect of its legislation might have been to eliminate forever from American politics the question of Protection and Free Trade. The act of 1816 settled nothing and effected little in the direction of protecting manufactures.

VI

A CHECK TO PROTECTIONISM

IN order fully to understand the causes of the action or inaction of the Congress of the United States upon the tariff, it is necessary to take both a broad and a minute view of the financial, commercial, and industrial, and not less of the political, conditions of the time under consideration. During the period from the year 1816 until 1824, when the next general revision of the tariff was made, there was practically no division of the people into parties. Federalism, in the partisan sense of the word, lingered here and there locally in a moribund condition; but the Republican party was overwhelmingly strong throughout the country. Yet there were differences in politics which occasioned a division upon the tariff. The conviction — always strong — upon the part of the Southern people, devoted chiefly to agriculture, that the protection of manufactures was adverse to their interests, became stronger than ever at this time,¹ and led to a more complete consolidation of the Southern vote. At the middle point of the period, in 1819 and 1820, for the first

¹ It has been often stated, sometimes by Southerners, that the attitude of the statesmen of the Southern States on the tariff question was changed because it was realized that slave labor could not be profitably employed in manufactures. The classification of votes given in previous chapters shows that protection derived little support from the South at any time. Some of the most prominent leaders of the South did advocate protection. Mr. Calhoun was the most conspicuous personage in the group, but it seems to have been on the ground that New England would be prosperous by spinning the cotton, the raising of which would enrich the South. They shifted to the other side when it appeared that Great Britain was a customer of vastly greater importance than the Northern States.

time in the history of the country, the slavery question became an acute issue in politics and began to arouse the antagonism between the upholders of slave labor and the free laborers employed in manufacturing, which was to affect greatly, in after years, the political aspects of the tariff question. For the time being the attitude of communities and of statesmen was influenced to a small degree only by considerations other than the general well-being of the country and local self-interest.

It was at this time that an active propaganda was begun by the advocates of a protective tariff. Societies for the promotion of American industry, the most important of which were in New York and Philadelphia, sprang up in many States, were in regular communication with one another, and adopted similar and simultaneous action in furtherance of the protective system. The strength of the movement is illustrated in one way by the fact that the legislature of New York, in March, 1817, passed a resolution requiring the members to appear dressed in American manufactures.¹ In another way it is shown by the success of the New York society in securing the adhesion of John Adams, Jefferson, Madison, and Monroe to its principles. The three ex-Presidents were elected members. Jefferson and Madison accepted the election by letter.² Monroe, then President, accepted his election in person and attended a meeting at which his services to the cause of protection were recognized in an address.³

As for the other features of the situation they must be reconstructed from extremely meagre materials. Indeed, there is some danger that isolated facts be taken erroneously as characteristic of a general situation, and that the assertions of interested persons be relied upon too implicitly. An avoidance of these and other possible errors limits still further the material of history. Never-

¹ Niles's "Register," vol. xii. p. 78.

² *Ibid.* p. 412.

³ *Ibid.* p. 311.

theless there are many facts that may be stated with confidence, regarding the causes of the action of Congress during Monroe's administration. We have seen that the impending expiration of the law imposing double duties, the redundant revenue under that law, and the perilous state of manufactures, induced if they did not compel Congress to adjust its fiscal and economical measures to a new situation, before it was known which features of that situation were to be permanent and which temporary, which were to become more marked and which were gradually to be effaced. Consequently the tariff act of 1816 was passed prematurely; and was not only ineffective for the purpose avowed when it was under discussion, but was not even a successful revenue measure.

So long as the flood of foreign goods continued to flow into our ports the revenue from customs duties alone was more than sufficient to meet the ordinary expenses of government, increased though they were by the extravagance which is an inseparable accompaniment of and sequence to a state of war. Congress made the mistake of supposing that the importations would continue to be large. Partly in order to excuse the duties which it feared might be regarded as excessive, it reduced the amount of the direct tax and discontinued some of the excise taxes. In 1817¹ it swept away the entire internal revenue system and abolished the direct tax altogether and left to the Treasury the customs duties as almost its sole reliance; for the additions to the revenue from sales of public lands and from miscellaneous sources was inconsiderable. When the market had become overstocked with foreign

¹ The proposition to repeal the internal duties failed, in the "short session," 1816-17, by a narrow majority. It was recommended by President Monroe, in his first annual message, December, 1817, and by the Secretary of the Treasury, Mr. Crawford, and an act in accordance with the recommendation was passed and approved before Christmas. The vote in the House of Representatives on passing the bill was 161 to 5; in the Senate it seems to have been passed unanimously.

commodities the revenue declined rapidly, the sum applicable to the extinction of the public debt was reduced, and the financial reverses of the government culminated in a deficit, in 1820 and 1821, which rendered necessary the negotiation of new loans — something before unknown in time of peace.¹ The introduction of rigid economy in expenditure and a recovery of the revenue restored a favorable balance in 1822.

It will be remembered that there was a tendency in Congress, while the act of 1816 was pending, to set off against each other the interests of the merchants and those of the manufacturers. The point was made that it was the foreign trade of the country that yielded the revenue for the support of government; that if the manufacturers were in distress the trials and hardships of the shipowners had been much greater and far more prolonged than theirs; and that if encouragement were to be given to any interest the merchants needed and deserved it as much as any others, and they should surely not be subjected to fresh deprivations for the benefit of the "mushroom" manufacturers. Although the pertinent reply was made to one head of the argument that the merchants paid no part of the import duties, but were allowed by the government to owe for the same until the consumer

¹ The following table shows, for the year 1815 — partly a year of war — and for the seven following years, the ordinary revenue of the government and the part of it derived from customs, and the ordinary expenditures, including interest on the public debt: —

Year	Customs	Total Ordinary Revenue	Expenses, including Interest
1815	\$ 7,282,942	\$15,696,917	\$32,943,661
1816	36,306,975	47,676,986	31,196,356
1817	26,283,348	33,099,050	19,990,893
1818	17,176,385	21,585,171	20,018,628
1819	20,283,609	24,603,374	21,512,004
1820	15,005,612	17,840,670	18,285,535
1821	13,004,447	14,573,380	15,949,553
1822	17,589,762	20,232,428	15,000,432

could pay them, yet the plea prevailed. The act inflicted no new disability upon American shipping. But no legislation which Congress could enact could give the merchants relief. One effect of the restoration of peace in Europe was to cut off all the privileges which had been enjoyed by neutral shipping. Embargo and non-intercourse involved a voluntary forfeiture of the privileges; they disappeared when the war began; they were not restored after the Treaty of Ghent, because the European wars also were ended, and there were no longer either belligerents or neutrals. The peace also restored completely to British shipping the freedom of the seas, and led to the renewal of old and the imposition of new restrictions upon trade with Great Britain and its colonies, save in British ships. An act of Congress in March, 1815, consequent upon the treaty of peace, repealed the discriminating duty—always imposed before that time—of ten per cent. upon the ships and their cargoes of foreign countries which should discontinue their own discrimination against vessels of the United States. Under this law British ships became privileged to enter our ports from England and the colonies on equal terms with the home shipping. They did in fact have an advantage over the domestic vessels, for they could bring cargoes to the United States from England, carry American produce to the West Indies, and thence transport colonial merchandise to England. The last leg of the triangular voyage was forbidden to our ships. There is a certain conflict in the testimony regarding the condition of commerce at this time. Many memorials from merchants represent their situation as desperate. One such paper presented to Congress in January, 1817,¹ declares that the regulations adopted by foreign governments have "rendered our vessels of little value and thrown our seamen and the numerous classes of mechanics connected with navigation almost

¹ Niles's "Register," vol. xi. p. 374.

out of employ." President Monroe, whose first annual message was extremely optimistic throughout, said that "an extensive and profitable commerce has greatly augmented our revenue." Mr. Niles remarks¹ that the message had been criticised for this statement as "not built on fact." He says that "it is very certain that our commerce is not flourishing; a very considerable part of our legitimate trade is in the hands of foreigners; many of our ships are laid up; many are but partially employed, and the business of shipbuilding has almost ceased in many of our ports. But the President had regard to this commerce as 'augmenting our revenue,' and in that respect it may be called extensive and prosperous."

An example of the annoyances to which American merchants were subjected is to be found in the action of the Nova Scotia legislature, which levied a duty of four dollars a ton on all plaster of paris exported from the colony to be landed at any port of the United States north of Cape Cod. The act was expressly designed to destroy the trade of the New England coasters which had carried on a profitable traffic in bringing cargoes of the article to their ports. Congress retaliated with an act forbidding the importation of plaster of paris into the United States, thus cutting off altogether the trade of Nova Scotia in it.

The ships of Great Britain made the most of their newly acquired privilege of entering the ports of the United States on equal terms as regarded import duties and tonnage dues. Of 3297 arrivals at the ports of Boston, New York, Philadelphia, Baltimore, and Charleston, in the year 1816, nearly one third — 1002 — were foreign, and almost exactly one fourth — 823 — were British.² In 1817 one third of the shipping entered at Boston was British.³ Previous to the act of 1815 American vessels had enjoyed nearly a monopoly of the trade of which foreigners now took one third.

¹ Niles, vol. xiii. p. 257.

² *Ibid.*, vol. xii. p. 324.

³ *Ibid.*, vol. xiii. p. 346.

Agriculture in the United States during this period was prosperous in the South but depressed in the North. The exemption of the Southern States from the distress which prevailed almost universally throughout the world was due to the constant foreign demand for cotton and tobacco. There was apprehension that new regions would be opened to the growth of cotton, thus causing injurious foreign competition; and that a renewal of the European wars would destroy the foreign market for the staple. So long as these two fears existed, some of the most prominent statesmen of the South were on the protectionist side of the tariff controversy, attracted thither by the home market argument. When the fears were allayed, the South became almost a unit against protection. In the North, in the period following the war of 1812, so many of the people were engaged in tilling the soil that there was a large surplus of foodstuffs beyond the consumptive capacity of the country. There was practically no market for it abroad. The law of Great Britain forbade the importation of wheat when the home price was less than ten shillings a bushel; and that price was not reached. In fact the cessation of the Napoleonic wars, and the consequent discharge of the great armies that had been in the field, produced an unexampled surplus of labor, led to a much increased acreage of tilled land, and thus resulted in greatly enlarged crops. There was also a vast increase of pauperism and distress. In none of the countries across the Atlantic was there a lack of food, but everywhere prevailed a terrible lack of the means to purchase it. Our breadstuffs were not needed nor desired; and the farmers of the Northern States who depended in any degree upon a foreign market suffered extremely.

The market for manufactured goods both at home and abroad was completely demoralized. Reference has been made already to the fact that when the long wars came to an end there was in England a large accumulation of

merchandise, a part of which came to this country and so inundated the market as to submerge and ruin most of our manufacturers. It was not to the United States alone that the goods were sent in quantities sufficient not only to devastate the domestic markets but to bring disaster upon those who shipped them. Henry Brougham, afterward Lord Brougham, in a speech in Parliament of which one passage has been much quoted in American tariff discussion, described the wild speculation that was based on the manufactured goods in stock at the end of the war.

After the cramped state in which the enemy's measures and our own retaliation (as we termed it) had kept our trade for some years, when the events of spring, 1814, suddenly opened the continent, a rage for exporting goods of every kind burst forth, only to be equalled (though not in extent) by some of the mercantile delusions connected with South American speculations. Everything that could be shipped was sent off; all the capital that could be laid hold of was embarked. . . . Not only clerks and laborers but menial servants engaged the little sums which they had been laying up for a provision against old age and sickness; persons went round tempting them to adventure in the trade to Holland, Germany, and the Baltic; they risked their mite in the hope of boundless profit; it went with the millions of the more regular traders. The bubble soon burst.

Mr. Brougham expressed sympathy with the victims of the disaster, but in one quarter of the world he found consolation:—

The peace with America has produced somewhat of a similar effect, though I am very far from placing the vast exports which it occasioned upon the same footing with those to the European market the year before; both because ultimately the Americans will pay, which the exhausted state of the continent renders very unlikely, and because it was well worth while to incur a loss upon the first exportation in order by the glut to stifle in the cradle those rising manufactures in the United States

which the war had forced into existence contrary to the usual course of things.¹

It may be remarked parenthetically that if this frank avowal by a politician who undoubtedly put into words what was in the minds of many others had been spoken and published a year earlier than it was, it might have resulted in giving quite a different character to the tariff act of 1816. A treaty of peace after a foreign war seldom restores friendly feelings between the peoples who are parties to it. The Americans were surely not friendly to the English in 1816. The war just closed had been undertaken to secure commercial independence. A distinct declaration of a purpose to put the people of the United States in industrial subjection would have been warmly resented. Mr. Brougham's speech came too late to affect the tariff legislation of Congress, but his words have often since done their duty in firing the protectionist heart.

The people who bought were unquestionably as much responsible for the excessive importation of foreign goods as were the merchants and speculators who shipped them. The merchandise came into a market accustomed to English manufactures and barren of them, and now cheaper than ever both because of the lower duty and because of the abundance and the pressure to sell. There is every reason to believe that Mr. Brougham's statement of the losses of the exporters is not exaggerated. The goods were sold by auction and frequently brought less than their first cost.² It is no wonder that people took ad-

¹ Niles's "Register," vol. xi. pp. 283, 284 [December 28, 1816]. The authenticity of this passage has been questioned by free trade writers. Nevertheless the speech was made and the passage above quoted is correctly transcribed. Those who are curious to go to original sources will find the passage in "Parliamentary Debates" [Hansard], vol. xxxiii. pp. 1098 and 1099, proceedings of the House of Commons on April 9, 1816. It may also be found in no. lii. of the Edinburgh "Review," for June, 1816, pp. 263 and 264.

² See Niles's "Register," vol. xi. p. 80.

vantage of so rare an opportunity to supply their wants. However patriotic they may have been, however strong their advocacy of home manufactures, sentiment was not powerful enough to induce them to neglect the chance to buy the foreign goods, most of them of better quality than the domestic product, and cheaper.

A full statement has not even yet been made of the havoc wrought in the United States by the large importations between 1816 and 1820. The auction system, which was resorted to because there was no other way to dispose of the cargoes, deranged the business of the regular merchants. It destroyed their trade and unsettled prices. Scores of memorials went to Congress praying for a regulation or a prohibition of sales by auction. Furthermore the tariff, insufficient at the best to secure fair competition to home manufacturers, was constantly and cunningly evaded. A systematic practice of undervaluation was introduced, the ingenious details of which are exposed in a memorial to Congress by New York merchants, in February, 1817. "It is the practice of the foreign merchant," they say, "to ship his goods to this country invoiced at very reduced prices to one of his agents here, who, having entered them, delivers them for sale to the hands of another agent who is furnished with the true invoice. The owner is beyond the reach of our laws. He who enters them affects to know nothing of them but through the medium of the invoice he receives. He who holds the true invoice has no agency in their entry. Thus they all elude the penalties of the law; and the revenue, the merchant, and the manufacturer become the common victims of foreign frauds."¹ This scheme was partially frustrated by the enactment of laws requiring the original invoices sworn to before the United States consul at the port of exportation to be submitted when the goods were entered at the custom houses, and creating the office of appraiser

¹ American State Papers, "Finance," vol. iii. p. 501.

at the chief ports. But the evil of undervaluation has always existed in spite of all devices to put a stop to it. The substitution of specific for ad valorem duties was frequently suggested as a remedy; but the controversy as to the better method of levying duties has come down to our own time.

Finally, the burden of the tariff imposed on imported goods was minimized by the credit granted on the duties, varying from three to twelve months. The importer was not obliged to pay the impost until he had had ample time to sell his goods and collect his bills. It may be remarked that the system of giving credit had existed from the beginning of the government; and that it renders quite impossible the task of discovering the average rate of duty imposed, since the duties collected in any year do not represent the duties levied on the goods imported in that year. A determined effort was made, in 1820, to change the law and introduce the system of cash payment of duties. After a protracted debate the bill was rejected by the House of Representatives by a vote of 91 to 55. The system of requiring the payment of duties before delivery of the imported goods was not introduced until 1842.¹

We turn now to the situation of American manufactures and manufacturers after the passage of the tariff act of 1816. That it was a condition of general depression was universally asserted at the time, and has been admitted by nearly all writers who have studied the subject. But some details regarding the state of industry at the time not only are interesting in themselves, but reveal the fact that all the causes of depression have not even yet been mentioned. For example, we have not yet taken account of the financial condition of the manufacturers at the time when they were forced to encounter the strong competition of foreign goods with their own. On this point Mr.

¹ The act of March 2, 1833, provided for the payment of duties in cash in 1842, and the tariff act of 1842 reenacted the provision.

Tod, of Pennsylvania, the chairman of the Committee of Ways and Means, in explaining to the House of Representatives the tariff bill of 1824, which he had lately reported, said that in 1816 probably nine tenths of the manufacturers were in debt, and only getting slowly out of it by the weekly profits of their business.¹ The remark is a general one. If it was true, and there is no reason to doubt it, we have an excuse entirely sufficient for the failure of some of them to adopt the improved and cheaper methods of manufacture then coming rapidly into use in England. American manufacturers have been reproached by writers of later times for not taking advantage of improvements already invented and employed in Great Britain. The opportunity to procure them came simultaneously with the enormous inflow of foreign merchandise, but it was an opportunity to persons already burdened with debt to expend large sums of money.²

The iron industry was a sufferer beyond most others. That is probably a good explanation of the fact that between 1816 and 1824, the most sturdy and persistent protectionists were the members from New York, New Jersey and Pennsylvania, the three States most interested in this manufacture. The consumption of raw iron was insignificant as compared with that in recent years. It was usually marketed in the form of bars, and the largest estimate of the amount needed for a year's supply of the United States prior to 1820, was 50,000 tons. During the war, all that was consumed was produced in the country. Mr. Simkins, of South Carolina, in the debate on the act passed in 1818 to increase the duty on iron and other articles, estimated the consumption at

¹ "Annals of Congress," Eighteenth Congress, first session, p. 1473.

² It must be borne in mind also that British law forbade the exportation of machinery, and this was a partial, although not a complete, excuse for the non-adoption of the improved processes. The prohibition continued until 1850.

45,000 tons; and said that in 1810, the home production was 30,000 tons; in 1814, 40,000 tons; and in 1817, owing to the heavy importations, only 15,000 tons. It appears from the Treasury reports that the importation of bar iron in the years from 1816 to 1822 was as follows:—

Year.	Tons.	Year.	Tons.
In 1816	12,293	In 1820	22,459
1817	21,160	1821	19,339
1818	17,620	1822	31,707
1819	18,311		

A consideration of all the circumstances surrounding the iron industry at this time would take us too far from our main purpose. They have been examined in detail by several writers,¹ whose statements of fact seem to be well substantiated, however strongly one may dissent from their conclusions. It is no doubt true that a considerable part of the disadvantage under which American iron-makers labored was due to their neglect to make use of the improved process and the coke fuel which imparted a prodigious stimulus to the English manufacture of the article. We may well remember, however, that at that time the distance apart of known iron deposits and coal measures, in any region where the transportation to a market would not be equivalent to a prohibition upon the manufacture, rendered absurd the suggestion of employing coke as a fuel; and that the iron-makers of this country produced on so small a scale and were financially in such straits that they were totally unable to command the means for procuring the expensive plant required for the new process. This is not put forward as an excuse for the imposition of higher protective duties on iron; for that is quite a different question. It does explain why the iron industry was at this time threatened with extinction. The point has been discussed whether the attempt

¹ See, for example, Taussig's "Tariff History," p. 50, *et seq.*, and Grosvenor's "Does Protection Protect?" chap. xiii.

to sustain the manufacture was not an injury rather than a benefit.¹ It may well be true that the effect of the protective duty was to postpone for a longer time than would otherwise have been the case the adoption of the improvements introduced in England. Yet this is not conclusive. Under a purely revenue duty the industry would have become wholly extinct. There is nothing to prove that, without a protective duty to encourage it, capital could have been attracted to a manufacture that had once gone to ruin and that had passed wholly into the hands of rich and strong English ironmasters. On the contrary, all the experience of this country with reference to other industries is against the theory that iron-making would have revived of itself.

The situation in the cotton manufacture bears a certain resemblance to that in the iron trade. The tariff of 1816 was not protective so far as those establishments were concerned which had not the most efficient machinery. This is almost equivalent to saying that it was protective in relation to but one factory in the country. It is not probable that Slater's machinery, in the mill at Pawtucket, where the cotton manufacture was created, was nearly equal in efficiency to that upon which it was patterned. It may fairly be assumed that the "water-frames" and other machines constructed for later mills were far inferior to the English contemporary machines. Nevertheless, the manufacturers all lived and many of them prospered until the terrible deluge of excessive importation in 1815 and 1816. Then they were overwhelmed. One establishment not only survived but stood unshaken. This was the Boston Manufacturing Company, in whose mill at Waltham were not only as good and efficient machinery as that in any English mill, but also some devices invented by its bold and enterprising managers and employes which

¹ Grosvenor holds that it was injurious; Taussig expresses doubt upon the subject, but is inclined to dissent from Grosvenor's position.

were to be found nowhere else. With abundant capital and good management, and a quickly won reputation for honest, strong, and durable goods, the company had and retained a profitable market. Its managers had urged the "minimum" clause which was put into the tariff act of 1816. The law imposed a duty of not less than $6\frac{1}{4}$ cents a square yard on all cotton cloth, which was prohibitory of all goods that might be put in competition with the fabrics of the Waltham factory; and the Boston Manufacturing Company, instead of joining with other corporations in asking for more duty, regarded the protection which it received as sufficient. It paid an annual dividend of 17 per cent. in 1817; $12\frac{1}{2}$ per cent. in each of the years 1818 and 1819; 15 per cent. in 1820; 20 per cent. in 1821; $27\frac{1}{2}$ per cent. in 1822; and 25 per cent. in each of the two following years. Although most of the other cotton manufacturers had a great struggle, and although many of them passed through bankruptcy, yet gradually, by the adoption of the power loom and other mechanical improvements in their mills, they recovered somewhat. Indeed, the minimum clause of the act of 1816 imposed a duty of nearly or quite eighty per cent. on coarse goods, and that would have been quite prohibitory had not the foreign manufacturers and the importers discovered that by mixing some ten per cent. of linen with cotton they could introduce the product as linen goods at a duty of fifteen per cent.¹

The woollen industry was still rather an embryo than an infant. There were many men in various parts of the country who were endeavoring to give it existence, but their operations were for the most part on a small scale.

¹ The law imposed by the minimum clause what was equivalent to a specific duty on "cotton cloths, or cloths of which cotton is the material of chief value." The act was interpreted as though it had read *the material of the highest price*. Linen was more costly than cotton, per pound, and therefore the mixed goods were charged with that duty only which would have been imposed on linen cloth.

Their necessities were probably greater than those of the cotton manufacturers, and from the representations made by them in numerous memorials addressed to Congress we may gather that they suffered grievously during the first years after the war. For a few years, after 1820, there were fewer complaints. The factory system was introduced, the employment of improved machinery took place on an extended scale, and by these and other means the industry was enabled to establish itself more fully than ever before, and to enjoy for a season a moderate degree of prosperity.

The foregoing general survey of the material condition of the country at the time of the passage of the act of 1816, and immediately afterward, will enable us to see in their true relations the events which controlled the action of Congress on the subject of the tariff during the years that followed. The first movement was made in 1818. Two features of the tariff of 1816 seemed, by general agreement, to have been mistakes, namely, the limitation of the twenty-five per cent. duty on cottons and woollens to three years, and the low rate of duty imposed on forged bar iron and other forms of iron. The subject of amending the tariff law was referred to the Committee of Ways and Means early in the first session of the Fifteenth Congress, and a series of bills was reported. The discussion upon them did not begin in the House of Representatives until April 13, 1818, one week before the close of the session. The first bill was one "to increase the duties on imported iron in bars and bolts, iron in pigs, castings, nails, and alum, and to disallow the drawback of duties on the reëxportation of gunpowder." This bill, together with one "to increase the duties on certain manufactured articles," was ordered to a third reading on April 14. Both bills were passed on the 15th. On the same day the bill to continue the twenty-five per cent. duty on cottons and woollens until the 30th of June, 1826, was ordered to

a third reading; and it was passed on the 16th. All three of the bills were passed promptly by the Senate, with but one important amendment which will presently be mentioned; and they were all approved on the 20th of April, the day on which the session closed.

The bill "to increase the duty on certain manufactured articles" was discussed during a small part of one day's sitting only, and the yeas and nays were not called upon it at any stage of its progress. It raised the duties upon copper manufactures, cut glass, Russia sheetings, and a few other articles. The proposition to continue the twenty-five per cent. duty on cottons and woollens was the occasion of a short but spirited debate, which was not reported. A motion to limit the prolongation of time to two years was defeated, 31 to 108; and the bill was ordered to a third reading, 106 to 34. It was passed without a division.

A brief report is given of the debate on the other bill of the series, that to increase the duty on iron in bars, etc.¹ It is necessary to take special notice of this bill, inasmuch as it is closely connected with the history of the iron manufacture in this country. The act of 1816 for the first time made a discrimination between "iron in bars and bolts when manufactured by rolling," and that which

¹ Taussig says ("Tariff History," p. 51, note) that "there is nothing in the congressional debates on the acts of 1818 to show what motives caused them to be passed." In fact, the motive of protection and that only is to be discovered in the remarks of every speaker who is reported. "Mr. Sergeant spoke . . . of the expediency of extending additional protection to the manufactures (*sic*) interested in this bill." Mr. Smith, of North Carolina, who opposed the bill, made an anti-protection speech, in the course of which he said, "I think it not the true policy nor the true economy of this country to force" manufactures "by bounties and by protecting duties. . . . If you commence this system all classes will have an equal right to your protection." And Mr. Simkins, of South Carolina, based his support of the bill, in a long speech, wholly upon the necessity of protection. Surely, too, the title of one of the bills reveals its sole purpose to be the protection of certain manufactures.

was not so manufactured. A high duty of \$1.50 per hundredweight was laid on rolled iron, and only 45 cents per hundredweight on the hammered, or forged, bars. The discrimination seems to have been made by general consent; and when the act of 1818, which perpetuated it, was under consideration, it was justified by those who opposed the bill as well as by those who favored it. Although the duty on rolled iron was almost prohibitory, no one proposed to lessen it. The reason for imposing it was because the rolled iron was so inferior to the hammered bars in quality and so much lower in price that American mechanics would be tempted to use it and thus bring the manufactures of the country into disrepute. The intention of the iron-makers was to keep the rolled iron out of the United States altogether, both for the reason just given and because they did not manufacture bars by rolling. It will be remembered¹ that they failed in their attempt to secure from Congress a higher rate of duty than was recommended by the committee, in 1816, but that the rate was cut down to 45 cents per hundredweight. The bill to increase the duty as reported by the Committee of Ways and Means, in 1818, and as passed by the House, fixed the duty at one dollar. The rate was cut down by the Senate to 75 cents. The vote on the amendment was 19 to 15; the majority was made up for the most part of Southern senators. The discriminating duty was undoubtedly first laid for the purpose already mentioned; but in after years it became a highly effective auxiliary to the general system of protection to the iron manufacture. It is impossible to determine whether it had any influence in retarding the adoption of improved methods of manufacture in this country, although some writers have determined that it did so. The real obstacles to mechanical improvement and cheaper production were the matter of transportation, and the poverty of the domestic iron-makers.

¹ See pages 147, 149.

The exclusion of rolled bars neither brought American iron ore and coal nearer together, nor made those engaged in the iron industry poorer or less enterprising. If the duties imposed had given a monopoly, or even a virtual control, of the home market to American producers, it might be contended that the effect of those duties was to enable them to continue in the old ways, and to remove that stimulus to improvement which competition gives. Since, in spite of the duties, the American iron-makers did encounter severe competition in the shape of large importations of hammered bars, it is clear that the case in favor of the theory that the duties made them indifferent and unenterprising requires something more than abstract reasoning to support it.

The movement in favor of more general and thorough protection to manufactures gathered strength after 1818, — not in consequence of the acts passed by Congress in that year, — and at the same time a popular agitation began in opposition to an increase of duties. In Congress, in the newspapers, and in private discussion, the tariff became a leading topic and a prominent political issue. On the day of the adjournment of Congress, April 20, 1818, the Secretary of the Treasury was directed, by a resolution of the House of Representatives, to report what further improvement might be made in the tariff by changing ad valorem to specific duties. Mr. Crawford submitted a long list of proposed changes of this sort in February, 1819.¹ We may infer what degree of protection was in the minds of some of the members from the passage, at the session of 1818-19, of a resolution calling on the Secretary for a report upon the effect on the revenue of a total prohibition of the importation of cotton and woollen goods, and how a deficiency so created might be made good.²

¹ American State Papers, "Finance," vol. iii. p. 415.

² *Ibid.* p. 459. Secretary Crawford's reply is not greatly important; but it contains a statement that the duties paid on goods charged with

The manifestation of interest in the question on the part of the general public took the form of memorials and remonstrances to Congress, a great many of which are embalmed in the huge volumes of the "American State Papers, Finance." The breath of life long ago departed from them, "long-winded" as they were. They were the productions of numerous local essayists who put in form the familiar arguments for and against the system of protection. In one case the Pennsylvania Society for the Protection of American Industry took up, point by point, the arguments advanced in a remonstrance of the Virginia Agricultural Society of Petersburg, and answered them sometimes in a logical, sometimes in a satirical tone. Thus Congress had the reasons for and against the protective system ready to its hand. ✓

It is well to take notice what were the arguments presented in these numerous remonstrances and memorials, in order to see how far the discussion had proceeded; also to observe the geographical origin and *locale* of the two movements. On the side of the protectionists there was little fresh material. The advantage of retaining the home market; the general distress which affected all industries, particularly that of manufacturing, to which the other evils were ascribed; the importance of industrial independence, and the menace of British machination against it; the solidarity of agriculture, commerce, and manufactures, — all these were familiar arguments, which reappeared with modified phraseology in most of the petitions. The remonstrants rested their case largely upon the point, always

twenty-five per cent. ad valorem, of which cottons and woollens were "almost the exclusive articles," amounted to \$17,813,277 in 1815; to \$11,013,142 in 1816; to \$4,967,503 in 1817; and to \$6,753,008 in 1818. It is to be presumed that calendar years are meant, for the duties reported in 1815 are more than twice as much as the total revenue from customs, as stated in the Treasury annual reports. (See p. 163.) Taking the four years together, the revenue from cottons and woollens was at least forty per cent. of the total receipts from customs.

the strongest weapon in the anti-protection armory, that protective duties were a tax upon the consumers, levied for the benefit of a particular class, and especially burdensome upon agriculture; but they also dwelt at great length upon the effect of high duties in promoting smuggling. The remonstrances of this class came chiefly from societies in Virginia, South Carolina, and other Southern States. There were also remonstrances from Boston, Salem, and Philadelphia, which were based upon the injury to commerce alleged to be the effect of protection to manufactures. The most interesting fact to be deduced from all these now unreadable papers is that in not one of them, on either side, prior to 1821, was the constitutionality of protection attacked; nor once defended, as though the point had been raised. It was, nevertheless, during the decade from 1820 to 1830, to be the question most debated with reference to tariff policy.

The first session of the Sixteenth Congress, which began in December, 1819, witnessed a momentous development of the tariff controversy, although it was productive of no legislation on the subject. A new House of Representatives, strongly favorable to protection, assembled, and Henry Clay was again elected Speaker. A significant indication of the purpose of the House was the creation of separate committees on Commerce and on Manufactures; both subjects had previously been given to a single committee. The question of dividing the committee was virtually a test of the opinion of the House on the question of protection. Mr. Clay made up the Committee on Manufactures exclusively from the friends of protection. Petitions and remonstrances for and against an increase of duties poured in upon Congress, and the most of them were referred to the Committee on Manufactures. The Secretary of the Treasury, in his annual report, indicated a deficit of more than a million dollars in the accounts of the current year, and foreshadowed one of five millions in

1820, unless rigid economy were introduced in the national expenditures. The Committee of Ways and Means did not venture to grapple with the question, but made a report condemning a resort to internal taxes, and recommending a loan to cover the impending deficiency.

In these circumstances the Committee on Manufactures, which had already reported bills to lay a duty on sales by auction, and to require the payment of duties on imports in cash after a specified date, brought into the House a bill providing for a complete revision of the tariff. A general increase in the scale of duties was proposed. All the ad valorem duties at $7\frac{1}{2}$ per cent. were to be increased to $12\frac{1}{2}$ per cent.; the second class, at 15 per cent., to 20 per cent.; the third class, at 20 per cent., to 25 per cent.; cottons and woollens were to be increased from 25 to 33 per cent.; ready-made clothing, hats, caps, and bonnets, from 30 to 40 per cent.; forged iron bars, from 75 cents to \$1.25 per hundredweight; hemp, from \$1.50 to \$2.50 per hundredweight; and almost all other articles were to be charged duties increased by from twenty to one hundred per cent. The purpose of the bill was frankly stated to be additional revenue by means of higher duties on sugar, molasses, coffee, and salt; and protection by means of the heroic increase of the rates on manufactured articles.

The bill came before the Committee of the Whole for consideration on the 21st of April. The early part of the session had been fully occupied with the portentous subject of the admission of Missouri, which brought on the first serious and rancorous debate on the question of slavery. There was a preliminary skirmish or two upon the tariff bill before the actual debate began. Mr. Livermore, of New Hampshire, moved, on April 14, to discharge the Committee of the Whole from the consideration of the subject, in order that the bill might be indefinitely postponed; and Mr. Lowndes moved a resolution calling on the Committee on Manufactures for the facts and figures

employed in drafting the bill. Both motions were defeated. It is evident, from what took place afterward, although it is not specifically reported, that Mr. Lowndes intimated that the information on which the bill had been drafted was derived from interested manufacturers.

Mr. Baldwin, of Pennsylvania, chairman of the Committee on Manufactures, opened the debate in favor of the bill, reported by himself, in one of the weightiest speeches on the subject of the tariff ever delivered in Congress.¹ Mr. Baldwin began by declaring that the accusation was not true that the committee had been acting as a private committee on the petitions of manufacturers. These petitions had not even been examined to ascertain if the manufacturers were making or losing money. "Their interest has not been a leading motive in our minds; it was of little importance; and if this bill, either in its general principles or in its details, cannot be supported on national principles, we are willing that it should fall and that its fate shall be ours." The committee felt that the country could not be flourishing or independent unless it could supply from its own resources its food, its clothing, and the means of defence, and that the system which had entailed upon us dependence must be radically changed. Mr. Baldwin next entered into an explanation of the course of the committee in reporting a general tariff bill. The first intention had been to present a measure affecting manufactures only, but the virtual abdication of the Committee of Ways and Means, which proposed a loan to effect a balance in the Treasury, impelled the committee to join the purpose of revenue to that of protection.

Entering upon the general question, Mr. Baldwin asserted that the existing revenue system had failed, and that from the operation of plain and natural causes. "The nation which relies for the means of paying its expenses

¹ It is printed in full, "Annals of Congress," Sixteenth Congress, first session, p. 1916.

solely on imposts, must encourage the importation and not the manufacture of its articles of consumption. Whilst this is its policy, its internal industry must be confined to articles of export to pay for foreign fabrics which are imported. With importations revenue must diminish;¹ and this has been the reason why all attempts to promote our own manufactures have hitherto failed. Now the system must be changed; you must either make perpetual loans or open new sources of revenue by giving a new turn to the labor of the nation." Later on in his speech he developed his plan, which was to levy internal taxes and excises on the manufactured goods protected by the impost, the rates of course to be so arranged as to afford protection still.

Mr. Baldwin next proceeded to explain the bill in detail. Taking first in order the three classes of ad valorem duties, he made the point that they were not higher than the war duties of 1812-15, and that if those duties had been retained in 1816 "you would not have been assailed by general cries of distress from all parts of the nation; we should have enjoyed not a nominal but a real independence; our resources would not have been sent abroad to protect and reward the industry of others, to the ruin of our own merchants, manufacturers, and farmers. But it was thought proper to reduce the duties, and the fear of smuggling, it seems, is assigned as the reason." The speaker here entered a general denial that there had ever been an appreciable amount of smuggling, and asserted that there was no difficulty in preventing it. He devoted great and careful attention to the proposed increase of the duties on cottons and woollens to thirty-three per cent. Aside from the usual justification of the protective system, he made much of the fact that Great Britain had recently imposed a duty of sixpence sterling a pound on wool, and of six per cent. on cotton, both arti-

¹ That is, when importations diminish, revenue also will diminish.

cles of export from this country; and that it excluded foreign wheat altogether. "Let those who complain so much that this agricultural interest will suffer by this bill reflect on these facts. Let the farmer decide whether it is most for his interest to purchase his clothing from the foreign manufacturer, who will purchase neither his wool nor his provisions, or the domestic one who will give him a market for both." Mr. Baldwin reminded the House that domestic cottons were now made cheaper than they were ever imported. The domestic competition would have this effect on every article, — a fact for the consideration of those who thought protection merely taxing the many for the benefit of a few.

It is not important to go into the reasons given for the proposed increase of duty on hemp, glass, and iron, further than to say that protection pure and simple was at the bottom of them all. Hemp was the article in which Mr. Speaker Clay was chiefly interested, as a representative of Kentucky, although his support of the protective policy generally was consistent and thoroughgoing. Of glass and iron, Mr. Baldwin, who resided in Pittsburg, said that one was "infinitely interesting to the district, the other to the State I represent." He concluded his review of the bill by explaining the proposed molasses and salt duties, levied for purposes of revenue. He then summed up in strong and terse language the arguments in favor of the bill. This brief summary of his speech gives no adequate idea of its comprehensiveness and power and dignity. Even in that part where he employed the hostile legislation of Great Britain as an argument for the passage of the bill, his tone was moderate and his language as calm as Hamilton himself would have used for the same purpose.

Immediately after Mr. Baldwin had concluded his speech, Mr. Smith, of Maryland, rose and offered a hostile amendment. Mr. Clay, who always made a practice

of participating freely in the debates when the House was in Committee of the Whole, interposed with a few significant remarks. He said it became the friends of the manufacturing system not to lend themselves with too much facility to alterations proposed to the bill. The committee had, with a patience and industry never surpassed in this House, prepared and reported a general system. If the friends of the general features of it listened to every application which should be made to change this or that particular item, the effect would be that they would lose the whole. The hint was taken, and the friends of the bill voted down nineteen amendments offered by opponents of the measure. One or two additional protective clauses were accepted. In one case only was the Committee on Manufactures defeated. The duty on books was reduced from 25 to 20 per cent., by a vote of 69 to 53.

When the consideration of the bill by sections had been completed, Mr. Tyler, of Virginia, made the motion usual at that time when the purpose was rejection of the bill, namely, to strike out the first section. Upon this motion he based a long "set speech." The pending bill had been asserted to be a mere experiment. And what was the character of that experiment? One which was to give a new direction to the capital and labor of the country. This and this only was the object of the clamor raised in support of what was called national industry. He denied that the manufacturers were entitled to aid. All classes labored under serious embarrassments, the result of the peace in Europe. Mr. Tyler went into an elaborate argument to show that the pending bill would not secure the permanent interests of the manufacturers. The first effect of the bill would be to add to the profits of manufacturers; and they would enjoy prosperity while other classes would labor under severe pecuniary embarrassments. Then fresh capital would be attracted to these enterprises, competition would ensue, and prices would

sink to their old level. Moreover, since there would exist an inequality in the profits of the various manufacturing industries, there would be a competition between them for labor, with the result of an advance in wages. They will thus be forced to advance their prices. "While the wages of labor are continually advancing, they will find their profits constantly diminishing, and their resort to high prices will resemble the desperate effort of the gambler whose hopes are all staked on the last throw of the dice. In vain. The foreign competitor again enters the market and our ears will again be deafened with cries for relief." Mr. Tyler found an example of this sequence of events in the history of the duty on bar iron. He traced the supposed need of further protection of that manufacture to the competition of the iron-maker with the farmer and merchant for labor.

He foresaw another consequence of the proposed policy. The result of encouraging manufactures, following the increase of investment of capital in such industries, would be an excess of production beyond the capacity of the country to consume. By that time the manufacturing interest would no longer appear before Congress in a tone of supplication, but in one of dictation. Congress would be told that it was responsible for the unfortunate investments, and that ruin awaited them unless they had further protection. "What then could you do? You would have to encourage exportation by bounties." Mr. Tyler then entered into a discussion of the evil effects of a system of bounties. Having arrived at "the lands-end" of the system, he saw disaster to the farmer, a reduction of the value of land, a diminution of the value of the farmer's capital, and a portion of the soil thrown out of cultivation.

The speaker admitted that agriculture was even then depressed, but no one could foretell how long the existing state of things was to continue. New causes of

dispute might arise among the nations of Europe. There was even then a speck on the horizon which might the next moment swell into a cloud, dark and portentous. But in any event foreign nations would not buy of us unless we bought of them. "You would then, by this cruel system, have diminished the value of the land, the capital of the farmer, and have shut him out almost entirely from all foreign markets." Mr. Tyler rejected the home-market idea, which he did not understand exactly as its advocates understood it. "Would you add," he asked, "by this bill, to the number of consumers?" Men must be fed in any event. You do not increase the number of purchasers by diverting men from one kind of labor to another. Furthermore the policy of the bill, while injuring the farmer and holding out only a futile hope of a home market, burdens the people with a heavy weight of taxation.

Mr. Tyler, now taking a broader view of the subject, asked if the country had reason to be dissatisfied with its condition, or its past. "A wilderness had been reclaimed. . . . Our march has been most rapid, but are we not still in our infancy? Does there exist any necessity for us to resort to artificial means to hasten our growth? . . . Can we hope or could we wish to advance more rapidly in the road of national wealth than we have done? Our population doubles in every twenty-five years, and our resources keep a proper pace with our population. . . . It would be unreasonable to expect that we should always experience sunshine. I tell the gentleman, then, that we want no change, and least of all the change that he would give us." Mr. Tyler said that he was near pronouncing impious the theory that we must become independent of foreign nations, "a theory which aims to subvert the ordinances of Heaven itself." Man is dependent on man and nation on nation. Differences of climate make them dependent on one another. Yet Congress was asked to

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proceed on the principle that it was correct to manufacture articles which might be obtained on much better terms from abroad. If every nation were to adopt this idea, each, instead of drawing from a common stock, would have to rely alone on its own capacity. Those arts which improve and embellish life would gradually decay, and the world would relapse into another state of vandalism. Mr. Tyler did not, however, believe that this would be the case. The intercourse with foreign nations would be carried on to a certain extent.

Considering the relative independence of agricultural and manufacturing nations, Mr. Tyler declared emphatically that the agricultural country had the decided advantage. "A manufacturing nation," he said, "is in every sense dependent on others. Look to England! Cut off from the markets of the world, and misery and ruin await her. Threaten to close your ports against her, and she becomes forthwith alarmed. Close them, and a great portion of her population are thrown out of employment and reduced to beggary. How is it with an agricultural nation? Other nations are in a great measure dependent on it for food. They may dispense with your silks and gewgaws, but bread they must have. And when its foreign trade is destroyed, that very circumstance operates beneficially to the poorer classes, for they are then enabled to obtain the necessities of life in greater abundance, on much cheaper and much better terms. This imaginary good, then, cannot be obtained without warring with the fiat of Omnipotence itself, and if obtained would be productive of crying evils."

After speeches by Mr. Storrs, of New York, and Mr. Gross, of Pennsylvania, in favor of the bill, the hostile motion of Mr. Tyler was rejected, by a majority of 25. The bill to abolish the credit system in the payment of duties was immediately taken up; and several members discussed the tariff generally rather than the proposition

immediately before the Committee of the Whole. Mr. Whitman, of Massachusetts (District of Maine), opposed an increase of duties and the protection of manufactures. He maintained that great manufacturing establishments were not desirable in this country. They would have an influence over the people that is to be dreaded. Such establishments have but one interest — adverse to commerce and oppressive to agriculture. Their owners can and will unite to accomplish any favorite purpose. Members had had one specimen of what they could do, even in their infancy. "An association in Philadelphia, calling itself a Society for the Promotion of National Industry, has its branches in every part of the Union, with which it corresponds, and which it directs and instigates and sets in motion by the means of pamphlets and newspaper essays. Its inflammatory and unfounded statements have pervaded every part of the Union. Each member of the present Congress has been favored with enough to make two large volumes. And these have for a moment deluded the people and made them believe it is wise to annihilate commerce in order to build up great manufactories. 'If they can do this in the gristle, what will they do in the bone?' The more you grant the more they will require. Avarice is never satisfied." Nevertheless, Mr. Whitman protested that he was "a friend to the reasonable and healthful growth of manufactures," not to "the bloated growth which tends to apoplexy." If they should have a premature growth, the wind would change and they would be overwhelmed in ruin.

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Mr. Archer, of Virginia, also made a long speech in opposition to the bill. For the most part he trod on familiar ground; but one passage illustrates a position not uncommonly taken at the time by those who placed their opposition to manufactures largely upon their preference for agriculture. "The objection of greatest force to an extended manufacturing system," he said, "related to the

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character of the population it had a tendency to form. What kind of population was it? A population distorted and decrepit as respects both bodily and mental endowments, equally marked by imbecility and abasement. How unlike our ancestors achieving the Revolution! . . . In large manufacturing establishments the worst evils, physical and moral, found their source or refuge. It was in such nurseries that pestilence was most accustomed to take its birth and collect its venom. . . . Among civilized nations the heated and surcharged atmosphere of extensive manufacturing establishments was found to present the situation most unfavorable to moral sanity." Yet such a population was not to be excluded from political rights; and the speaker went on to draw a hideous picture of the manifold evils to result from the policy proposed.

Mr. Clay replied in a comprehensive speech, summarizing in an admirable manner the arguments in favor of the bill, presenting the well-known reasons of the protectionists in a charmingly familiar and yet forcible manner. One passage only of his speech need be quoted. Referring to the remarks of Mr. Whitman, of Massachusetts, he said: "The honorable gentleman professes to be a friend to manufacturers! And yet he has found an insurmountable constitutional impediment¹ to their encouragement, of which, as no other gentleman has relied upon it, I shall leave him in the undisturbed possession."

The debate was a long one, but most of the speeches require no notice. Mr. Lowndes delivered the last and

¹ Mr. Whitman went hardly so far as Mr. Clay represented him as going. His constitutional point was suggestive only. "What originated the government of the United States? Was it constituted with a view to manufactures? Is there any specific delegation of power in our constitution for this object? Have we even any direct control over manufacturing establishments? . . . Hitherto we conducted the affairs of this nation with some view to the original design of this government. We have been content generally to do that which we were distinctly and explicitly authorized to do, namely, to regulate commerce — external commerce and commerce between the States."

weightiest speech in opposition, as Mr. Clay had done in favor of the bill. He admitted the usefulness of manufactures; and did not deny the right and duty of the government to encourage them — that point he declined to discuss. But he maintained that since the labor and capital of the country were limited, although it were admitted that it was our interest to manufacture articles which we could procure at cheaper rates abroad, it must be still more our interest to manufacture such as prove themselves adapted to our circumstances by being able to bear foreign competition. In directing the largest amount of capital and labor into branches which require the most encouragement, we really divert them from those into which they would flow with the most advantage. In encouraging one branch of industry we necessarily discourage another. Mr. Lowndes cited the iron trade as a proof of this assertion; the profits of it had been greater when the capital and population were small and foreign competition unrestricted than when all the circumstances were changed in our favor. He made an elaborate examination of the home-market argument, which he rejected altogether. He held that whatever might be the domestic demand for our grain, the supply would exceed it; and if there were an exportation, however small the quantity, the price of that small amount must determine that of the whole. Accordingly, gentlemen might lay duties or withdraw them from cotton, wheat, and tobacco, and they would change nothing but the words on the statute-book. He also considered the argument drawn from the balance of trade, and rejected that also. In conclusion, he entered into an analysis of the duties imposed by European countries, to support a statement that the scale of encouragement of American manufactures was the highest in the world.

The foregoing summary of the debate upon the bill is necessarily inadequate. The speeches cover fully seventy-

five pages of the "Annals of Congress," and the report given in that work is itself a condensation of the speeches delivered. The purpose has been to give the spirit of the debate, to set forth the most striking of the arguments, and, so far as was possible without occupying too much space, in the words of the members. It must be said that, on the whole, the intellectual quality of the speeches against the bill was superior to that of those in its favor. There were some puerilities in the arguments of Mr. Tyler and others in opposition, and there was power in the speeches of Mr. Clay and Mr. Baldwin. But whereas Mr. Barbour, of Virginia, Mr. Lowndes, and one or two others grappled boldly with all the arguments of the friends of the bill, some of their own points were wholly unanswered. It is worth while in this connection to draw attention once more to the fact that the point of the unconstitutionality of a duty levied solely for the purpose of protecting the home manufacture of an article, has not yet been formally raised. It was suggested, but not in the form it took ultimately; and Mr. Lowndes, who was the wisest member of the House opposed to the bill, did not repeat it, even after Mr. Clay's contemptuous reference to it and refusal to reply to it.

The bill came to a vote in the House on the 28th of April. Motions to postpone the measure until the next session, and to amend, were defeated, save that an amendment reducing the salt duty to twenty cents a bushel was carried by 93 votes to 71; and the bill was ordered to a third reading, 90 ayes, 69 noes. There was further debate, and another attempt was made to defeat the bill by recommitting it; but it was passed by a vote of 91 ayes against 78 noes; 14 members being absent. By combining the two votes we have an expression of the views of all but nine members, and the result is 91 in favor of the bill, 83 opposed to it. New England was closely divided, 19 in favor, 18 opposed, and 4 absent.

New York, New Jersey, Pennsylvania, and Delaware gave 55 affirmative votes, and but 1 in the negative; and 1 member was absent. The South gave 8 affirmative votes, and 63 negative votes; 4 members were absent. Ohio, Indiana, and Illinois gave 8 votes, all in favor of the bill.

It may be remembered that the plan of the Committee on Manufactures comprised three measures, — a bill to require the cash payment of duties, and one laying a heavy tax on auction sales,¹ besides the general tariff bill. All three measures suffered wreck. The cash payments bill was rejected by the House, 91 to 55. The auction sales bill was first defeated, then reconsidered, amended by fixing a duty of five per cent. on sales of competing goods, and passed. But after the defeat of the tariff bill by the Senate it was again reconsidered and postponed until the next session, which was equivalent to rejection.

Meantime the Senate had made short work with the tariff bill which was received from the House on May 1, and referred to the Committee on Commerce and Manufactures, reported back on May 3, and on the following day was postponed until the next session. The vote rejecting it was 22 to 21. The geographical division of the Senate upon this question was almost identical with that of the House. New England divided 6 to 4 in favor of the bill. The Middle States were unanimous, 8 senators in favor of it; the South gave 3 votes in favor and 16 opposed; the West, 4 in favor and 2 opposed.

The vote, both in the Senate and in the House of Representatives, was influenced to a certain degree by a consideration to which reference has already been made in writing of the vote on the tariff bill of 1816. Whatever of lingering Federalism there was in either House of

¹ The proposition was to tax the sale of American goods one per cent.; foreign goods of the varieties protected by impost duties, ten per cent.; and non-competing foreign goods, five per cent.

Congress was opposed to protection, possibly for other good reasons, but also because the defeat of the bill would thwart the wishes of a majority of the Republican members. It is not intended to assert that this consideration entered strongly into the matter. There were New England Republicans, as well as many Southern Republicans, who opposed the bill. But the vote of Harrison Gray Otis alone, as senator from Massachusetts, would have turned the scale in favor of the bill. Nevertheless, he voted in accordance with the wishes of his constituents, and was thanked for his action by a public meeting in Boston.

The defeat of the bill was a grievous blow to the protectionists; but they did not all take the matter so sorely to heart as did a certain newspaper in Kentucky.¹ Mr. Niles, indeed, who was ever one of the most persistent and unflinching of protectionists, consoled himself easily. He regarded the bill as objectionable in certain respects, but did not make his criticisms specific. Evidently he had no hope that anything would be accomplished by the Congress next to be chosen, under the old apportionment, but prophesied that that which was to be elected after the approaching census would do all that legislation could do to restore the market to home industry. His judgment was amply justified by the event; for no legislation whatever upon the subject of the tariff was passed by the Seventeenth Congress, and the Eighteenth Congress enacted, in 1824, a thoroughgoing protective tariff act.

Before dismissing the history of the abortive tariff bill of 1820, it seems desirable to call attention to an important report made to the Senate by Mr. Sanford, of

¹ Cited by Niles, vol. xviii. p. 241. The Lexington "Public Enquirer" appeared with a black border and column rules, and wailed thus: "Mourn, O ye sons and daughters of Kentucky. O ye inhabitants of the United States, put on sackcloth and ashes, for the great enemy of your independence has prevailed. You must still remain tributary to the workshops of Europe. Your factories must remain prostrate. Your agricultural productions must lie and rot on your hands."

New York, upon the Statistical Accounts of Commerce and Navigation.¹ Reference has been made repeatedly to the incompleteness and untrustworthiness for any statistical purpose of the returns of imports and exports in the early days of the republic. In the report now referred to, the existing system is examined in detail, and its great faults are pointed out. It appears from its statements that neither the quantity nor the value of free goods imported appeared anywhere in the returns; that goods subject to specific duties were entered by quantity only, and those charged with ad valorem duty at value only. Thus there was no way of ascertaining either the quantity or the value of goods imported. As for exports, it was required by law that the master of a vessel should furnish a manifest of its cargo, both quantity and value; but it appeared that the collectors at the several ports were accustomed at their pleasure to reject the valuation made by masters of vessels — although there was no motive to misrepresent the facts — and return their own valuation to the Treasury. The committee laid down certain sound general rules for a reform of the system, which were soon afterward adopted, and since that time the statistical records of the foreign trade have been fairly and increasingly full, accurate, and trustworthy.

The agitation of the tariff question did not cease with the defeat of the bill by Congress; but for the time the discussion was carried on chiefly by the opponents of protection. Meetings were held in various parts of the country and memorials and addresses against an increase of duties were prepared for presentation to Congress. Inasmuch as there was no effort whatever to revive the tariff bill at the second session of the Sixteenth Congress, this movement requires only a mention of the fact that it existed. An exception may fairly be made in the case of the Boston meeting, held on October 3, 1820, because it was addressed

¹ "Annals of Congress," Sixteenth Congress, first session, p. 2494.

by Daniel Webster, whose views upon the subject of the tariff afterward underwent a change. Mr. Webster entered Congress as a Federalist member from New Hampshire, in 1811. When the question of the double duties was under consideration in 1814, he maintained that they should be temporary, and opposed the principle of fostering manufactures by means of a tariff. In 1816, as we have already seen, he opposed the act of that year. He was out of public life in 1820, having removed to Boston, but was called upon to address the anti-tariff meeting in Faneuil Hall, and made a carefully prepared and weighty speech. The two most pregnant passages in that speech are quoted by Lodge.¹ They contain a suggestion of the constitutional question, but in such a form that no one then or now could take issue with him, if the words be taken in their most obvious meaning. "He certainly thought," so the report runs, "it might be doubted whether Congress would not be acting somewhat against the spirit and intention of the Constitution in exercising a power to control essentially the pursuits and occupations of individuals in their private concerns — a power to force great and sudden changes both of occupation and property upon individuals, not as incidental to any other power, but as a substantial and direct power." And again: "It would hardly be contended that Congress possessed that sort of general power by which it might declare that particular occupations should be pursued in society and that others should not. If such power belonged to any government in this country, it certainly did not belong to the general government." Mr. Webster did not, so all the commentators upon his works and opinions agree, deny the right of Congress to encourage certain occupations as an incident of the power to raise revenue; but he denied that the incidental object might take the place of the object for which the power was granted — as of the

¹ "Life of Daniel Webster," American Statesmen Series, p. 160.

greater importance. This was no doubt his meaning in the passages quoted. No one has ever contended that Congress has a right to require certain occupations to be pursued, or to forbid the pursuit of others, not being immoral or contrary to public policy. The course of public legislation desired by the protectionists was intended to permit, not to insist upon, the establishment of certain industries, and to forbid none. Mr. Webster's opinions were greatly modified, indeed reversed, at a later stage of the tariff discussion, not only on the subject of constitutional power, but on that of the economic wisdom of protectionism. It has sometimes been regarded as significant that his speech at the Faneuil Hall meeting in 1820 is not included in his published works. Doubtless the omission would have been in accordance with his wish, — not to avoid the charge of inconsistency, for of course the omission did not suppress the speech nor expunge the record, but because his later utterances expressed his mature and final views upon the subject. Some effort has been made to reconcile his earlier with his later speeches;¹ but Mr. Webster himself on several occasions admitted with the utmost frankness that his opinions had changed.

The Seventeenth Congress, the last elected under the apportionment made after the census of 1810, met in December, 1821. The protectionist sentiment was far weaker than it had been in the Sixteenth Congress. Mr. Clay was no longer a member, and Philip P. Barbour, of Virginia, was elected Speaker. Mr. Barbour was opposed to protection, and had made one of the important speeches against the bill of 1820. He constituted the Committee on Manufactures with a majority against tariff legislation. Mr. Baldwin was still chairman; but he was forced to report — on so much of the President's message as related to manufactures — that he was instructed by a majority of the committee that legislation on the tariff at

¹ See Lodge; also Curtis's "Life of Webster," vol. i. p. 208.

this time was inexpedient. In truth, Mr. Monroe's references to the subject of the tariff in his message of December 3, 1821, is a notable example of that President's skill in putting *parvum in multo*. It was an argument on both sides of the question.¹ The financial condition of the Treasury had improved, and there was no longer any excuse for tampering with the tariff save for protection purposes.

Mr. Baldwin brought into the House a series of resolutions in favor of an increase of certain duties. More than once he moved that the resolutions be considered, but was defeated. At the next session Mr. Baldwin did not attend, not having recovered from a most serious illness; and in the customary reconstruction of committees Mr. Tod, of Pennsylvania, became chairman of the Committee on Manufactures. He reported in due course a bill "for the more effectual encouragement and protection of certain domestic manufactures," and succeeded in getting it considered in Committee of the Whole on several days, late in the session. But the debate dragged; and he made a motion to discharge the Committee of the Whole from the consideration of the bill, so as to bring it directly before the House. The motion was defeated. The next day Mr. Tod tried to have the debate on the bill resumed, but the House refused to follow his lead, and that was the last that was heard of the measure.

It does not seem to have been an act politically wise to bring forward tariff bills that were doomed to certain defeat, surely in the Senate if not in the House of Representatives. The Eighteenth Congress was already elected when Mr. Tod was made chairman of the Committee on Manufactures. It was chosen under the apportionment of 1823, based on the census of 1820, which increased largely the proportional representation of the tariff States. New York, Pennsylvania, Ohio, Kentucky, and Tennessee,

¹ See "Messages and Papers of the Presidents," vol. ii. p. 107.

all of them States where the protection sentiment was in full control, gained twenty-three additional members in the House, and the gains and losses of the South offset each other. The effort to pass a tariff act before the reapportionment took effect was hopeless. But the friends of that measure looked forward with well-justified confidence to success in the new Congress.

VII

THE TARIFF AS A LOCAL ISSUE

THE passage of the Tariff Act of 1824 was but the decisive battle of a campaign that had long been waging. The ground on which the contest took place was that on which previous battles had been fought, albeit the field was larger; and the weapons used were changed in no significant degree. One of the armies received reinforcements, and although inferior to the other in generalship and discipline, won the victory — since numbers counted. Nevertheless, for many reasons this contest deserves and requires different and fuller consideration than any which preceded it. The more thorough discussion of principles by men of greater ability — particularly on the anti-protection side of the question — is not the least of these reasons; the impossibility of making a condensed summary of the debates other than tedious and unilluminating is the controlling motive to a change of method.

A brief narrative of the progress of the act through Congress is first in order. The President made reference to the matter of the tariff in each of the two annual messages preceding the passage of the act. In December, 1822, he delivered himself of the following evasive sentences: —

From the best information that I have been able to obtain, it appears that our manufactures, though depressed immediately after the peace, have considerably increased, and are still increasing under the encouragement given them by the tariff of 1816 and by subsequent laws.

Satisfied I am, whatever may be the abstract doctrine in favor of unrestricted commerce, provided all nations would concur in it, and it was not liable to be interrupted by war, which has never occurred and cannot be expected, that there are other strong reasons applicable to our situation and relations with other countries which impose on us the obligation to cherish and sustain our manufactures. Satisfied, however, I likewise am that the interest of every part of our Union, even of those most benefited by manufactures, requires that this subject should be touched with the greatest caution and a critical knowledge of the effect to be produced by the slightest change. On full consideration of the subject in all its relations, I am persuaded that a further augmentation may now be made of the duties on certain foreign articles in favor of our own and without affecting injuriously any other interest.

A year later events had rendered a revision of the tariff practically certain. Mr. Monroe was slightly more decided in his expressions, but was far from satisfying the protectionists, who were confident of victory, with his brief and cautious recommendation.

Having communicated my views to Congress at the commencement of the last session respecting the encouragement which ought to be given to our manufactures and the principle on which it should be founded, I have only to add that those views remain unchanged, and that the present state of those countries with which we have the most immediate political relations and greatest commercial intercourse tends to confirm them. Under this impression I recommend a review of the tariff for the purpose of affording such additional protection to those articles which we are prepared to manufacture, or which are more immediately connected with the defence and independence of the country.

This passage from the President's message was referred to the Committee on Manufactures of the House of Representatives, at the beginning of the first session of the Eighteenth Congress. The committee reported five weeks later, on January 9, 1824, a bill which was to be

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the basis of one of the historic tariff acts of the United States. The discussion upon the bill began on February 10; and from that time until the 16th of April, when it was passed, it was almost constantly before the House. It was received by the Senate on April 19, and after some skirmishing was referred to the Committee on Commerce and Manufactures, which reported it back, with amendments, on the 24th. The Senate began to consider it on April 28, and passed it on the 13th of May. Reconsideration removed all differences between the two Houses, with the exception of two amendments; these were adjusted by a committee of conference; and the bill received the approval of the President on May 22.

It may be said without reservation that the sole object of the bill in the minds of its friends was the protection of manufactures. That protection was sought for various purposes, as will appear hereafter; but, either as itself an end, or as a means to an end, it was not merely the chief, but the only aim of the promoters of the bill. During the preliminary discussions before the people, when the congressional elections were pending, and during the progress of the bill through Congress, there was not a pretence that the provision of revenue for the government was even a secondary reason for urging a revision of the tariff. When the act was passed, the Treasury had for two successive years reported a fine surplus; and there was no danger and no fear that the existing laws would fail to bring in sufficient funds to meet expenses and leave a goodly sum to be applied to the extinction of the debt. The complete dissociation of the two matters of revenue and protection is illustrated by the fact that they are treated as distinct and unconnected topics in the messages of the President. In the message of 1822 the subjects of the army and the military academy, of the navy and its employment against pirates in the West Indies, of yellow fever at Pensacola, and of internal improvements, inter-

vene between the consideration of the two subjects. In the message of 1823 an even greater variety of public matters separates the announcement of a highly favorable condition of the finances and the recommendation of higher duties already quoted. It is true the fiscal effect of the proposed act was referred to frequently in the debates; but on the one hand the measure was condemned by its opponents as tending seriously to impair the revenue, and on the other hand it was defended as not likely to result in a diminution of receipts.

Mr. Benton says¹ that "the bill, though brought forward avowedly for the protection of domestic manufactures, was not entirely supported on that ground. An increase of revenue was the motive with some, the public debt being still near ninety millions, and a loan of five millions being authorized that year." The last clause is simply disingenuous. The implication is that the revenue had been deficient, and that the loan was necessary to balance the accounts of the government. The fact was that the loan was specifically authorized and its proceeds specifically appropriated by Congress to meet the obligations incurred under the treaty with Spain of February 22, 1819, ceding Florida to the United States. With respect to the main statement, diligent reading of the whole debate fails to reveal the fact that any member of either House of Congress based his support of the bill on its promise of higher revenue. It will be well in this connection to quote some expressions by speakers who opposed and others who favored the bill as to the anticipated effect on the revenue. "In any event," said Mr. Cambreleng, of New York, a man of great authority on financial subjects, "our revenue system will be seriously injured by the measure."² Another opponent of the bill, Mr. P. P. Barbour, of Virginia, argued at length that its inevitable effect would be

¹ "Thirty Years' View," vol. i. p. 34.

² "Annals of Congress," Eighteenth Congress, first session, p. 1575.

to reduce the revenue ; but he declared that he would not vote for it if it were sure to increase the revenue, "for this obvious reason, that the exigencies of the Treasury do not call for an increase of revenue."¹ Mr. Clay, in his great speech upon the bill, discussed the question in a manner quite consistent with this view. He took up the allegation that the Treasury was to suffer, as one of the objections raised against the bill ; declared that it was a mere matter of conjecture, and to be determined only by experience ; expressed the opinion that although theoretically the tendency might be to impair the revenue, the growth of the country tended to neutralize it ; and concluded this part of his argument by asking if it were not better to secure the benefits which the bill would bring, even if ultimately it were to render necessary a resort to excise, than to go on without protection.² Mr. Tod, the chairman of the Committee on Manufactures, anticipating the objection afterward raised, said that "for three years, or perhaps longer, it may be reasonably expected that the revenue will be increased by the change here proposed. But if the contrary were apprehended, that would be no reason against increasing the real wealth of the country by protecting domestic industry."³ Other expressions of the same tenor, by members of less standing than these, might be cited ; but not one, it is believed, inconsistent with the foregoing quotations. Mr. Benton may have wished to suggest an excuse for his own vote in favor of the bill, one that would not force him to admit that under the subsequent stress of partisan politics his opinions underwent a change ; but the "Annals of Congress" do not furnish evidence that at any time he gave to the Senate a reason for his vote.

After the elections of members of the Eighteenth

¹ "Annals of Congress," Eighteenth Congress, first session, p. 1917.

² *Ibid.* pp. 1983-1985.

³ *Ibid.* p. 1478.

Congress had been held, Niles asserted,¹ with the emphasis of "small caps," "There will be a positive majority of at least forty-five of the representatives of the people in favor of the protection of domestic industry, and the subject will not be talked to death as it has been." He proved to be a false prophet in one assertion, and did not increase his reputation by the other. The majority for protection was at no time as great as he anticipated, and it melted almost away under the skilful generalship of the opposition; and the bill was under consideration by one House or the other continuously for more than three months. When Mr. Tod, as chairman of the Committee on Manufactures, first moved the House into Committee of the Whole for the consideration of the bill, the motion was antagonized by John Randolph. "Sufficient for the day is the evil thereof," he remarked. "I hope the House will do no such thing." The vote for going into committee was 93 to 82, — not a large majority. It is not to be supposed that the vote was an accurate test; but it surely does not indicate intense enthusiasm for the bill. On some of the amendments proposed during the early part of the debate the majority exceeded thirty; as, for example, on a motion to reduce the rate of duty on woollen goods from thirty per cent. to twenty-five, the vote was in the negative, 71 to 106. After several ineffectual attempts to break the protection majority by radical amendments, the opponents discovered weaker points for attack; and having succeeded through these in dividing the supporters and impairing the integrity of the bill, they proceeded again to greater matters and inflicted much damage upon the measure. One most important feature of the bill as originally reported was a section providing that on all articles upon which a bounty was granted by the country from which they were exported, or a drawback equivalent to a bounty, the amount of such bounty should be added

¹ "Register," vol. xxiv. p. 19.

to the duty on importation into the United States. This provision was attacked as an infringement upon the commercial treaty with Great Britain, which forbade the imposition of higher duties upon its products than upon similar products of other countries. After an interesting debate upon the question, the section was struck out by a vote of 114 to 66. It was one of the worst reverses the committee and the protectionists suffered. No doubt the point made against the section was sound and unanswerable; but when some even of the opponents of the bill, Mr. Webster, for example, virtually admitted the reasonableness of the principle of the section, in discussing specific articles on which bounties were given, it seems strange that the ingenuity of the friends of the bill was not equal to the devising of some method of accomplishing their object indirectly.

Another feature of the original bill, deemed by the protectionists of great importance, established the principle that goods composed of mixed materials should be assessed as manufactures of the material charged with the highest rate of duty. The clause was treated with the scantest courtesy. It was rejected, both in Committee of the Whole and afterward by the House, by a vote so decided that the members were not counted.

It does not appear that the ultimate passage of the bill was at any time doubtful; but the margin of superiority on the part of the protectionists became extremely narrow. When the final vote was taken in the House only two members were absent.¹ The vote stood 107 to 102. The vote of the Speaker, Mr. Clay, would have increased the majority to six. In the Senate, also, two members were absent, and the vote on passing the bill was 25 to 21.

Some of the details of the action on the bill will be mentioned hereafter. It will be sufficient at present, in

¹ "The voting so zealous that several members were brought in upon their sick couches." - Benton's "Thirty Years' View," vol. i. p. 34.

order to indicate how far from complete was the triumph of the protectionists, to say that the articles on which ample protection was urged most strenuously were iron, hemp, cotton bagging, and manufactures of wool and cotton, and that on not one of these articles did the Committee on Manufactures succeed in carrying through the rate of duty originally proposed. Some duties were reduced in the House; the rest in the Senate. On more than one of them the protectionists were defeated in Committee of the Whole, were able to restore the duty by extraordinary exertion upon a call of the yeas and nays in the House, but were overcome in the Senate; and the House ultimately acquiesced in the reduction. It is of course true that the act was still decidedly protective in character, even after the adverse amendments were adopted.

The debate upon the bill was one of the ablest and most thorough and profound in the history of Congress. It was participated in by a large number of members, the most of whom prepared themselves carefully for the discussion. By their treatment of the general principles involved in the measure, and of the conditions surrounding the several industries concerned, they showed that they had studied the subject both broadly and minutely.

The friends of the bill rested their argument for the necessity of passing it upon the deplorable condition of the country; and on this point their statements were challenged and denied by their opponents. The most specific assertion of the prevailing distress was made by Mr. Clay, who said:¹—

In casting our eyes around us, the most prominent circumstance which fixes our attention and challenges our deepest regret is the general distress which pervades the whole country. It is forced upon us by numerous facts of the most incontestable character. It is indicated

¹ "Annals of Congress," Eighteenth Congress, first session, p. 1963.

by the diminished exports of native produce; by the depressed and reduced state of our foreign navigation; by our diminished commerce; by successive unthreshed crops of grain perishing in our barns and barnyards for want of a market; by the alarming diminution of the circulating medium; by the numerous bankruptcies, not limited to the trading classes but extending to all orders of society; by an universal complaint of the want of employment and a consequent reduction of the wages of labor; by the ravenous pursuit after public situations, not for the sake of their honors and the performance of their public duties, but as a means of private subsistence; by the reluctant resort to the perilous use of paper money; by the intervention of legislation in the delicate relation between debtor and creditor; and, above all, by the low and depressed state of the value of almost every description of the whole mass of the property of the nation, which has on an average sunk not less than about fifty per cent. within a few years. This distress pervades every part of the Union, every class of society; all feel it, though it may be felt at different places in different degrees. It is like the atmosphere which surrounds us — all must inhale it and none can escape it. In some places it has burst upon our people without a single mitigating circumstance to temper its severity. In others, more fortunate, slight alleviations have been experienced, in the expenditure of the public revenue, and in other favoring causes. A few years ago the planting interest consoled itself with its happy exemption; but it has now reached this interest also, which experiences, though with less severity, the general suffering. It is most painful to me to attempt to sketch or to dwell on the gloom of this picture. But I have exaggerated nothing. Perfect fidelity to the original would have authorized me to have thrown on deeper and darker hues. . . . We have not, thank God, suffered in any great degree for food. But distress resulting from the absence of a supply of the mere physical wants of our nature is not the only, nor perhaps the keenest distress to which we may be exposed.

Many of the speakers on the other side of the question denied the accuracy of this sketch; none of them did so

with greater discernment and candor than Mr. Webster. His general dissent from the view taken by the Speaker is thus expressed:¹—

I dissent entirely from the justice of that picture of distress which he has drawn. I have not seen the reality and know not where it exists. Within my own observation there is no cause for so gloomy and terrifying a representation. In respect to the New England States, with the condition of which I am, of course, most acquainted, the present appears to me a period of very general prosperity. Not, indeed, a time for great profits and sudden acquisition; not a day of extraordinary activity and successful speculation. There is, no doubt, a considerable depression of prices, and in some degree a stagnation of business. But the case presented by Mr. Speaker was not one of depression but of distress; of universal, pervading, intense distress, limited to no class and to no place. We are represented as on the very verge and brink of national ruin. So far from acquiescing in these opinions, I believe there has been no period in which the general prosperity was better secured or rested on a more solid foundation. As applicable to the Eastern States, I put this remark to their representatives and ask them if it is not true. When has there been a time in which the means of living have been more accessible and more abundant? when labor was rewarded, I do not say with a larger, but with a more certain success? Profits, indeed, are lower; in some pursuits of life which it is not proposed to benefit, but to burden, by this bill, very low. But still I am unacquainted with any proofs of extraordinary distress. What, indeed, are the general indications of the state of the country? There is no famine nor pestilence in the land, nor war, nor desolation. There is no writhing under the burden of taxation. The means of subsistence are abundant; and at the very moment when the miserable condition of the country is asserted, it is admitted that the wages of labor are high in comparison with those of any other country. A country, then, enjoying a profound peace, a perfect civil liberty,

¹ "Annals of Congress," Eighteenth Congress, first session, p. 2028.

with the means of subsistence cheap and abundant, with the reward of labor sure and higher than anywhere else, cannot be represented in gloom, melancholy, and distress but by the effort of extraordinary powers of tragedy.

Mr. Webster took up one by one the allegations of Mr. Clay which were not noticed in the foregoing extract. He denied that the exports had fallen off greatly; he ascribed the decline of prices to the disordered currency, and asserted that it was not greater than that which had taken place in other countries; and attributed the numerous bankruptcies to the same cause and to overspeculation. For positive proof that the condition was, nevertheless, fairly prosperous, he appealed to the national consumption of the "comforts of life," citing tea as the best example; to the uninterrupted progress in internal improvements, — roads, bridges, and canals; to the fact that the colleges of the land contained more students than ever before, showing that fathers still had the means to give their sons an education; to the continued endowment of charities and public institutions; and to the absence of defalcation of revenue and of a pressure of taxation.

The truth as to the condition of the country seems to lie between the two statements.¹ Mr. Clay reported, perhaps he overdrew, what he saw in Kentucky and in other parts of the West and South; Mr. Webster stated with less exaggeration the situation in New England. The materials for forming an accurate general view of the prevailing condition do not exist. However, as the presumed existence of widespread distress was rather the most effectual argument than the only one to which resort could be had, it is not necessary to ascertain the exact truth of the matter.

¹ Nevertheless Benton ("Thirty Years' View," vol. i. p. 266), commenting upon Clay's retrospective account of the situation in the years from 1817 to 1824, in his great tariff speech in 1832, — which is virtually a repetition of the statement in 1824, — remarks that "this was a faithful picture of that calamitous period."

A condition of things more or less unsatisfactory being admitted, the question arose, what was the cause. Here, again, there was the widest difference of opinion. Clay attributed all the existing evils to the absence of legislation to encourage manufactures. We had shaped our policy exclusively with reference to a state of war in Europe. So long as there was war the country had prosperity. Its agricultural productions were in quick demand and its shipping was fully employed. When peace came both agriculture and commerce were depressed. The soundness of his position was proved by this: that if a fresh war were to break out, prosperity would at once be restored. The remedy, the only one at the command of Congress, was the adoption of such measures as would give industry a new vent, — a true American policy, which would result in the building up of a home market to supplement the foreign market, to the great advantage of agriculture and commerce.

The opposing theory as to the causes of such depression as was admitted has already been given briefly. The other speakers added little to Webster's statement. Obviously, from the point of view of those who opposed the bill, a new protective tariff was no remedy. They scouted the idea that manufactures were not already protected by the existing tariff. The policy which the protectionists denominated "American" they declared to be one which better deserved the name of English, because it was that which Great Britain had long maintained, but was now on the point of abandoning. As for the "home market," some of the speakers — Mr. Webster was not one of them — denied that the bill would have an effect to enlarge that market.

The policy of England was discussed by many speakers. Webster entered most fully into the matter and showed a thorough familiarity with the laws, the literature, and the state of public opinion on the subject. He

had, of course, no difficulty in proving that practical politicians were fast coming to the view long held by philosophical economists that the true policy for England was one of free trade. The speakers in favor of the bill remarked sarcastically upon the fact that the protective policy of Great Britain was still "in full and vigorous operation," — as Mr. Clay put it, — whatever might be the current theoretical opinions of British statesmen on the wisdom or folly of protection.¹ Even if it were true that England was about to abolish all restrictions upon trade, the fact proved nothing. Protection had in that country accomplished its purpose. The arts had there attained such superiority, Mr. Clay urged, "that she may safely challenge the most unshackled competition in exchanges. It is upon this very ground that many of her writers recommend an abandonment of the prohibitory system. It is to give greater scope to British industry and enterprise. It is upon the same selfish principle. The object of the most perfect freedom of trade with such a nation as Britain, and of the most vigorous system of prohibition with a nation whose arts are in their infancy, may both be precisely the same. . . . The abolition of the restrictive system by Britain, if by it she could prevail upon other nations to imitate her example, would have the effect of extending the consumption of British produce in other countries where, her writers boldly affirm, it could maintain a fearless competition with the produce of native labor. The adoption of the restrictive system on the part of the United States, by excluding the produce of foreign labor, would extend the consumption of American produce, unable, in the infancy and unprotected state of the arts, to sustain a competition with foreign fabrics."²

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¹ "Gentlemen say that Great Britain is fast becoming a convert to the books, and they prove it, not by acts of legislation, but by selecting a stray speech or two." (Speech of Mr. Tod; "Annals of Congress," Eighteenth Congress, first session, p. 2231.)

² *Ibid.* p. 1990.

Few of the speakers on either side of the question failed to express an opinion on the home market argument. Upon this point, also, Mr. Clay gave the clearest and fullest statement of the protectionists' contention, which may be thus summarized, largely in his own words: Civilized society requires, first of all, a market for the disposal of its surplus profits. That market may be at home or abroad, or both, but wherever it be it should be large enough to absorb the entire surplus. It is most desirable that there should be both a home and a foreign market, but of the two the home market is altogether preferable. A foreign market, even if it is now sufficient to take our surplus, cannot continue to be so. Assuming that production and consumption are proportioned to population,¹ since the increase of the population of the United States is four times as great as the increase of population in Europe, our power of production increases in a ratio four times as great as their power of consumption. Even if Europe could consume our surplus produce, it will not. It refuses to receive our breadstuffs on any terms. Agriculture is and must and should ever be our greatest interest. In order to invigorate it, we must give a new direction to some of our industry. Still cherishing a foreign market, let us create also a home market, to give further scope to the consumption of the produce of American industry.

All the existing employments of society, the learned professions, commerce, agriculture, are now overcrowded. We stand in each other's way. . . . Let us suppose that half a million of persons are now employed abroad in fabricating for our consumption those articles of which, by the operation of this bill, a supply is intended to be provided within ourselves. That half a million persons

¹ It must be borne in mind that Mr. Clay was speaking solely with reference to what were then the only exportable articles of American production, namely, articles of food, tobacco, and cotton. His assumption was fairly justified in regard to those articles, and at that time.

are, in effect, subsisted by us ; but their actual means of subsistence are drawn from foreign agriculture. If we could transport them to this country and incorporate them in the mass of our own population, there would instantly arise a demand for an amount of provisions equal to that which would be requisite for their subsistence throughout the whole year. . . . But if, instead of these five hundred thousand artisans emigrating from abroad, we give by this bill employment to an equal number of our own citizens now engaged in unprofitable agriculture, or idle from the want of business, the beneficial effect upon the productions of our farming labor would be nearly doubled.

The greater steadiness and certainty of the home market, as compared with the foreign, were also strongly insisted upon by many of the speakers for protection.

The opponents of the bill had apparently not mastered the subject of the home market theory, for their arguments against it were for the most part weak and superficial. A good example of one way of answering Clay is found in the speech of Mr. Rankin, of Mississippi,¹ who contented himself with saying: "The idea of a home market for either our produce or manufactures to any considerable extent, is most fallacious ; it has no foundation in reason or truth, but is calculated to delude and deceive the people." Not all the speakers were so dogmatic as was he. Mr. Hamilton, of South Carolina, taking up the Speaker's illustration of half a million persons withdrawn from agriculture and set at manufacturing, said: "The competition for employment among the five [hundred] thousand would necessarily tend to lower the rate of wages, whilst their subtraction from agriculture, if it operated as the honorable gentleman calculated, is to increase the price of subsistence. If this last expectation is not realized, there is no lure held out to the farmer to embark in an experiment the burden of which he may be assured he will in the end have to bear. But the

¹ "Annals of Congress," Eighteenth Congress, first session, p. 2010.

probable consequence resulting from this project is, that whilst the price of labor would be diminished, the price of agricultural products would remain the same — at least, uninfluenced by the home supply and the home demand." The last statement was based upon the theory that the price of the whole supply of an article of which a part is exported is regulated by the price realized abroad. But however sound that proposition may be, it is not easy to see by what process of reasoning he arrived at the conclusion that wages were to be reduced by a measure which diminished the number of agricultural laborers and gave newly created employment to those withdrawn from farms and those who were already unemployed.

Mr. P. P. Barbour, of Virginia, who delivered one of the most carefully considered speeches in opposition to the bill, answered the home market argument as follows: "It is argued that it [the bill] will furnish a better and a more steady market to the agriculturists. Let us examine this pretension. The agricultural produce consists either of food or of the materials of manufacture. So far as it consists of food there is no increase of consumers; for, as it has been well said in one of the memorials sent to this House, we now feed them all and we can do no more. The argument, however, proceeds upon the assumption that a portion of labor now engaged in agriculture will be transferred to manufactures, and thus, the quantity of agricultural produce being diminished, there will be a better price for the remainder. This is indeed a consoling promise! With countless millions of fertile land yet uncleared, a part of that now in cultivation is to be deserted. Then it must remain in a state of waste and desolation; for whence is to be derived the labor to cultivate it, in lieu of that which has gone to manufactures? Can that system be a sound one which proposes not only to arrest our progress in clearing new lands, but even to diminish the area of our present culti-

vation?"¹ It will be observed that Mr. Barbour rather deprecates than denies the home market effect anticipated by the protectionists.

Mr. Garnett, of Virginia, also treated the home market question at some length — too great length to be quoted here; and his remarks cannot be summarized, because the present writer confesses that he does not understand them.² Mr. Webster was extremely cautious in his expressions upon the point. "One great object proposed," he said,³ "for example, is the increase of the home market for the consumption of agricultural products. This certainly is much to be desired; but what provisions of the bill are expected wholly or principally to produce this is not stated. I would not suggest that some increase of the home market may not follow from the adoption of this bill, but all its provisions have not an equal tendency to produce this effect."

From the foregoing summary and quotations, which it is believed cover everything in the form of argument brought against the "home market" proposition of Mr. Clay, — excepting Mr. Garnett's incomprehensible reasoning, — it will be seen that the protectionists had decidedly the better of the debate on the point. In after times free trade writers of greater weight and power took up the question and found more effective answers; but for the time being the opponents of the bill were worsted in argument.

Another subject extensively discussed by many of the speakers was the "balance of trade" theory. It is a topic which furnishes ground for argument only because the disputants refuse to understand each other. To be sure, a defender of the idea of a balance of trade may talk nonsense, as did Mr. James Buchanan, of Pennsylvania, afterward President, in this debate. "He [Mr. Web-

¹ "Annals of Congress," Eighteenth Congress, first session, p. 1926.

² *Ibid.* p. 2091.

³ *Ibid.* p. 2035.

ster] stated," said Mr. Buchanan,¹ "that the old notions concerning a balance of trade were idle and ridiculous, and that they had been exploded by all enlightened political economists of the present day. This may be true so far as it respects political theorists; but no practical statesman either in our own or any other country has ever acted on such principles. There can be no case put which will be a stronger illustration to show the propriety of attending to the balance of trade than the ruinous commerce which is now prosecuted between the United States and Russia. In that trade there is an annual balance against us of more than \$2,000,000. What are the articles which we receive from Russia and which create the balance? Iron, hemp, and the manufactures of hemp — articles which we are capable of producing and manufacturing in abundance for ourselves. Will any gentleman contend that if we did supply ourselves with these articles we would not keep among our own citizens that balance which we now annually pay to Russia, and thus as a nation be so much the more rich and independent? Is it necessary to use an argument to prove that this would be a desirable event?"

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It surely is not necessary to use an argument to prove that it depends altogether upon a variety of considerations which Mr. Buchanan does not even mention, whether it would be desirable or not. Nor would any sensible protectionist base any argument upon so superficial an understanding of the balance of trade theory. As in many other matters, Mr. Clay gave the best outline of the idea in its defensible form: "However the account may be made up, whatever may be the items of a trade, commodities, fishing industry, marine labor, the carrying trade, all of which I admit should be comprehended, there can be no doubt, I think, that the totality of the exchanges of all descriptions made by one nation with another, or

¹ "Annals of Congress," Eighteenth Congress, first session, p. 1891.

against the totality of the exchanges of all other nations together, may be such as to present the state of an unfavorable balance with the one or with all. It is true that in the long run the measures of these exchanges, that is, the totality in value of what is given and of what is received, must be equal to each other. But great distress may be felt long before the counterpoise is effected. In the mean time there will be an export of the precious metals, to the deep injury of internal trade, an export of public securities, a resort to credit, debt, mortgages. Most if not all of these circumstances are believed now to be indicated by our country in its foreign commercial relations. What have we received, for example, for the public stocks sent to England? Goods. But these stocks are our bond, which must be paid."¹

Mr. Tod expressed a similar idea in terse and picturesque language: "Gentlemen say, and so say the economists, that what is called an unfavorable balance of trade is no reason against importing manufactures instead of making them. It is impossible, they say, to purchase more than you are able to pay for. The remark is true and intelligible enough, but it has no application to the subject. What sluggishness, what dependence, what beggary, either of an individual or of a nation, may not be defended by the same argument? You cannot be exhausted of more than you have. Very true; but, what would be just as bad, you can be exhausted of all that you have. All the consolation of that argument will apply as well to a pauper in the poor-house."²

Mr. Webster, who virtually started the discussion on the balance of trade, afterward returned to the subject in his carefully prepared speech. At first he treated the subject jocularly; then he undertook seriously to demolish the theory, not as stated by one who upheld it, — for he spoke

¹ "Annals of Congress," Eighteenth Congress, first session, p. 1982.

² *Ibid.* p. 2229.

after Mr. Clay, and was answering his speech, — but as he defined it himself. “Some days ago,” he said,¹ “the balance of trade made its appearance in debate, and I must confess, sir, that I spoke of it, or rather spoke to it, somewhat freely and irreverently. I believe I used the hard names which have been imputed to me; and I did it simply for the purpose of laying the spectre and driving it back to its tomb. Certainly, sir, when I called the old notion on this subject nonsense, I did not suppose that I should offend any one, unless the dead should happen to hear me. . . . Let us inquire, sir, what is meant by an unfavorable balance of trade and what the argument is, drawn from that source. By an unfavorable balance of trade, I understand, is meant that state of things in which importation exceeds exportation. To apply it to our own case, if the value of the goods imported exceed the value of those exported, then the balance of trade is said to be against us, inasmuch as we have run in debt to the amount of this difference. Therefore, it is said, if a nation continue long in a commerce like this it must be rendered absolutely bankrupt. It is in the condition of a man who buys more than he sells, and how can such a traffic be maintained without ruin? Now, sir, the whole fallacy of this argument consists in supposing that whenever the value of imports exceeds that of exports, a debt is necessarily created to the extent of the difference; whereas ordinarily the import is no more than the result of the export augmented in value by the labor of transportation. The excess of imports over exports, in truth, usually shows the gains, not the losses, of trade; or in a country that not only buys and sells goods but employs ships in carrying goods also, it shows the profits of commerce and the earnings of navigation.”

Webster elaborated this view of the matter in the familiar method, and illustrated it by the story of a vessel which made a circuitous voyage, first to Mocha, thence

¹ “Annals of Congress,” Eighteenth Congress, first session, p. 2045.

successively to Holland, to Mediterranean ports, and home, returning with one hundred thousand dollars more value than she had at starting. And he jeered at the idea that this transaction, which was highly profitable to individuals, but which constituted an example of what he represented as an unfavorable balance of trade, could be bad for the country. The difficulty with it all was that Webster, in spite of his contempt for ghosts, was fighting the ghost of something that never existed. There was nothing in his argument which touched the balance of trade theory as it was stated by Mr. Clay; and probably nothing in it, save his perverted definition of a balance of trade, to which Mr. Clay would not have subscribed.

For the first time in the congressional debates on the tariff the constitutional question was brought into prominence. It had been suggested more than once before, as we have seen already; but on previous occasions those who raised an objection on the ground of the incompetency of Congress to pass a tariff for protection did so with little apparent confidence in the soundness of their own position. The constitutional aspect of the question was to be the matter chiefly at issue in the next great contest, and the foundation of the discussion was laid in 1824. The first suggestion on this point deserves notice rather from its grotesqueness and far-fetchedness than because it had any influence upon members. Mr. Mercer, of Virginia, apropos of the duty on cotton bagging, advanced the idea that since the bagging was to be used in covering cotton bales for exportation, the duty was repugnant to that clause of the Constitution which forbids the imposition of a duty on exports. No member seems to have thought the remark worthy of a reply.

Mr. P. P. Barbour, of Virginia, was the first member who made a serious attack upon the constitutionality of a protective tariff. He said: "The Constitution gives to Congress the power to lay and collect taxes, duties, im-

posts, and excises. This bill proposes to lay and collect duties, and therefore I shall not undertake to say it is a violation of the letter of the Constitution. But this I do mean to contend, and I think I shall be able to prove, with as nigh an approximation to demonstration as moral evidence is capable of, that this bill does violate the spirit of the Constitution. The power to impose taxes and duties, it will not be denied by any gentleman, was given to us for the purpose of raising revenue, which revenue is to be applied to the ends pointed out in the Constitution. Now, sir, as far as, by this bill, it is proposed to encourage manufactures or any other department of industry, we shall be using this power not only not for the purpose for which it was given, but for another and a different one, and, as I shall attempt to prove, one which will defeat that for which the power was given; and then the question presents itself whether we do not in effect transcend the limits of our legitimate authority as much by the exercise of a granted power for a purpose for which it was not granted as by the exercise of a power not granted. I answer that we do."¹ He illustrated his position, by supposing that Congress, under the grant of the power to borrow money, were to accede to the request of capitalists to borrow their idle funds at interest, at a time when the Treasury did not need additional revenue;² that Congress, acting upon a belief that the importation of certain articles of luxury was injurious to the wealth, the morals, or the simplicity of the people, should impose absolutely prohibitory duties, and thus enact sumptuary laws;³ and that, under the

¹ "Annals of Congress," Eighteenth Congress, first session, p. 1918.

² The establishment of postal savings banks, providing for the acceptance by the government of all money offered to it, irrespective of its own financial situation, would be the exercise of such a grant of the power to borrow money. So far as the present writer is aware, no constitutional objection has been raised to the establishment of such banks.

³ Congress has exercised this power, without question, by absolutely prohibiting the importation of certain articles: obscene books and pictures,

power to maintain a navy, employment beyond the need of the navy were to be given to idle merchant seamen. All these cases, Mr. Barbour said, would be examples of the misuse of granted powers; and "if, as must be admitted, the power to lay duties were given solely to raise revenue," the imposition of protective duties is open to the same objection.

Mr. Rankin, of Mississippi, touched upon the constitutional question, but did not discuss it. He did not think it worth while. "With those who believe that under the power to collect taxes, regulate commerce, or lay imposts, we have the right to tax every other class of industry to force into existence a particular interest, it would be useless to argue, as they have found and are determined to exercise the power. I regret to say, sir, that I never have, since I have been in this House, found a majority of this body desirous and determined to exercise a power, that they have not found such power, if not in the letter of the Constitution, in the spirit of it; if not in the spirit, in what have been very appropriately called, 'the vagrant powers of the Constitution.'"¹

The only other reference to the constitutional question found in the debates, on the side of the opponents of the bill, is in the speech of Mr. Hamilton, of South Carolina,² who remarked that it would not be contended that the Constitution contained a specific grant of the power to encourage manufactures. "It has, however, been found under a power to regulate commerce and to levy imposts. That the framers of the Constitution intended under this clause to confer no such grant is obvious from the fact of their negating, in convention, a proposition to insert in that instrument a section giving the power in question, as

instruments and drugs for procuring abortion, and lottery tickets. See section 11, Tariff Act of 1890; section 10, Tariff Act of 1894.

¹ "Annals of Congress," Eighteenth Congress, first session, p. 2004.

² *Ibid.* p. 2207. Mr. Webster did not advert to it even indirectly.

might be seen by reference to the journals. Nor can the power be found under the clause giving the grant of authority to levy duties on imports for the exclusive purposes of revenue. The proposed scheme for the encouragement of manufactures is destructive of that uniformity of taxation which is the imperative precept of that instrument in relation to this power."

Mr. Clay gave the fullest answer to the constitutional objection, and if he did not cover the ground completely, left little for others to say except in elaboration of his ideas. He said:¹—

Congress has power to lay duties and imposts under no other limitation whatever than that of their being uniform throughout the United States. But they can only be imposed, according to the honorable gentleman [Mr. Barbour], for the sole purpose of revenue. This is a restriction which we do not find in the Constitution. No doubt, revenue was a principal object with the framers of the Constitution in investing Congress with the power; but in executing it, may not the duties and imposts be so laid as to secure domestic interests? Or, is Congress denied all discretion as to the amount or the distribution of the duties and imposts?

The gentleman from Virginia has, however, entirely mistaken the clause of the Constitution on which we rely. It is that which gives to Congress the power to regulate commerce with foreign nations. The grant is plenary, without any limitations whatever, and includes the whole power of regulation of which the subject to be regulated is susceptible. It is as full and complete a grant of the power as is that to declare war. What is a regulation of commerce? It implies the admission or exclusion of the objects of it, and the terms. Under this power some articles by the existing laws are admitted freely; others are subjected to duties so high as to amount to their prohibition; and various rates of duties are applied to others. Under this power laws of total non-intercourse with some nations, and embargoes, producing an entire cessation of

¹ "Annals of Congress," Eighteenth Congress, first session, p. 1904.

commerce with all foreign countries, have been from time to time passed.

The only additions to Mr. Clay's statement that are worth noticing are contained in the speeches of Mr. Strong, of New York, and Mr. Cassedy, of New Jersey. Mr. Strong attacked the argument of Mr. Barbour by showing that, carried to its logical conclusion, it would forbid every other consideration in arranging a tariff than that of deriving from duties the largest amount of revenue. "If the power of laying duties, to which the gentleman referred, respects revenue alone, whence the discrimination in the existing tariff? Why is the duty on manufactured tobacco, for example, so high as almost entirely to exclude the foreign product? Wherefore are other articles, the productions of foreign countries, as dyewoods, for instance, admitted duty free? If it be not for the purpose of encouraging manufactures and protecting the national industry, what is it for? Why has the revenue which might have been derived from a duty on these articles been sacrificed?"¹

Mr. Cassedy discovered another weak point in the argument, which he exposed as follows: "The supposed violation, if I have correctly comprehended its nature, is to consist not so much in overt act as in intention. You may (says the objection) constitutionally pass a bill imposing duties on imports, provided it be done with the sole view and intention of raising a revenue; but if you intend by its enactment to protect and encourage the industry of the country, and impose duties adequate to the accomplishment of that end, the whole character of the act is changed, and it degenerates into a violation of the spirit of the Constitution. This mode of interpreting the Constitution, in my judgment, has in it too much subtlety and refinement to be just, and cannot be sustained by the provisions of the instrument itself. . . . It is not

¹ "Annals of Congress," Eighteenth Congress, first session, p. 2121.

the interpretation practically given to them by the Congress of 1789, which sat shortly after the adoption of the Constitution, and was, if I mistake not, composed in part of the same distinguished statesmen who had been members of the convention which gave it birth."

The constitutional question assumed such a great degree of prominence in the years immediately after the passage of the act of 1824 that the discussion of it is deferred for a chapter by itself. It does not appear that any speaker against the tariff in the Eighteenth Congress regarded this objection as the chief criticism upon the bill; although, if it were in his opinion a sound objection, it would have been conclusive, and of itself sufficient to condemn the measure completely.

Another point in tariff discussion which has played a great part in more recent times was raised in the House debate, — that, namely, of the bearing the difference in wages between this country and foreign manufacturing nations should have upon the protective policy. In 1824 the high rate of wages in the United States was used as an argument against protection. It was met by the friends of the bill with an assertion that the rate was not substantially higher here than abroad; that whatever difference existed was rendered of little account by the use of machinery; and that the small disadvantage which might remain was quite counterbalanced by the possession of the raw materials of manufacture, which other countries had to obtain by importation. On this point the attitude of the contending factions was long ago changed. Each has taken the position of the other, and finds in the situation ground for supporting its own cause. The protectionists aver that wages are higher in this country than elsewhere, and they put that fact forward as a reason for a high tariff, to protect high wages. The free-traders deny that wages are really higher here than abroad, taking into account their purchasing power, and maintain that if they

were so, legislation should not be invoked to keep them up artificially.

Not only was the discussion of general principles noteworthy in this debate. The consideration of the value, the condition, the needs, and the prospects of individual manufactures evinced a wider knowledge of the industrial situation than had been manifested on any previous occasion. The first attack upon the bill was made upon a motion to strike out the clauses relating to distilled spirits, the effect of which, if successful, would be to leave the duties as they were established by the act of 1816. The spirit duties have long ceased to be levied with much regard for the interests of distillers. In 1824, the rum of New England and the whiskey of Kentucky were important objects of protection. After a debate which lasted two or three days, the Committee of the Whole refused to amend the spirit clauses of the bill.

A motion was next made to reduce the duty on woollen goods from 30 to 25 per cent. The woollen clauses were the subject of prolonged and repeated contests. The original proposition of the Committee on Manufactures was: (1) that manufactures of wool should pay 30 per cent. duty until June 30, 1825, and afterward a duty of $33\frac{1}{3}$ per cent.; (2) that all woollen cloths, or cloths of which wool should be a component material, excepting carpets and carpeting, flannels, baizes, and other unmilled woollen or worsted stuff goods, costing at the place whence imported, with an addition of 10 per cent., less than 80 cents per square yard, should be charged with duty as though they cost 80 cents; (3) upon flannels, baizes, and other unmilled woollen goods a similar minimum of 40 cents per square yard was fixed; (4) Brussels and other carpets of higher grade were to pay 50 cents per square yard, and other carpets and carpeting 20 cents. As finally passed the bill laid a duty of 30 per cent. until June 30, 1825, on all manufactures of wool except worsted stuff

goods and blankets—which were to pay 25 per cent.—and after that time $33\frac{1}{3}$ per cent.; with a proviso that on all such manufactures, except flannels and baizes, costing not more than $33\frac{1}{3}$ cents per square yard at the place whence imported, the duty should be only 25 per cent. It will be seen that not only had the minimum clause disappeared but the contrary principle had been adopted, namely, that the lower priced goods should bear a lower instead of a higher rate than the high-priced goods. On the first test vote in Committee of the Whole the integrity of the woollen clauses was sustained, 71 to 106. Later on Mr. Tod himself, in order to gain friends for the bill, moved a reduction of the minimum on high-priced woollens to 40 cents, and to strike out the minimum on flannels and baizes. This action caused surprise to the supporters of the bill, and Mr. Tod subsequently withdrew the amendment. The clauses were, nevertheless, amended by striking out the minimum proviso altogether, in Committee of the Whole on the last day of the consideration of the bill in committee, April 6; and in the House the next day the amendment was accepted by a vote of 101 to 99. By great exertion the friends of the bill, on a reconsideration, succeeded in rejecting the amendment, 104 to 101, almost every member being present and voting. But all their efforts were unavailing, as the Senate amended the clauses radically, and the House was obliged to submit.

Before remarking upon this conclusion of the deliberations of Congress it is necessary to state the course of events with respect to the duty on the raw material, with which the problem of protecting woollen manufactures was then and has ever since been inextricably involved. Wool had been free of duty from 1789 until 1816. In the act of 1816 it became chargeable with 15 per cent. duty as an unenumerated article. The Committee on Manufactures proposed, in 1824, to levy a progressive rate of duties on

raw wool, namely, 25 per cent. for one year, until June 30, 1825; 30 per cent. for the next year; 40 per cent. for the years 1826-27; and thereafter 50 per cent. This was amended in Committee of the Whole as follows: the duty was to be 20 per cent. for one year; 25 per cent. for the next year; and by an addition of 5 per cent. each year was to become 50 per cent. after June 30, 1830. In the Senate an amendment limiting the duty to 30 per cent. was adopted, and the House agreed to it. Consequently the duties imposed by the act were: 20 per cent. until 1825; 25 per cent. until 1826; 30 per cent. thereafter. The wool duty was proposed and was advocated as a measure protective of the grazing interest. It was said during the debate, and was virtually admitted by the supporters of the bill, that the purpose was ultimately to prohibit the importation of foreign wool altogether.

The effect of the combined duties on wool and on woollens, it is easy to see, was not favorable to the manufacturers. The duty on a part of their goods only was to be raised from 25 per cent. to 30 per cent. for one year and to $33\frac{1}{3}$ per cent. thereafter; and on all the cheaper goods it was to remain unchanged at 25 per cent. But the duty on all wool was to be raised one third — from 15 to 20 per cent. — at once, and by successive steps was to be doubled. The manufacturers of woollen goods had been engaged in a heroic struggle for existence. In spite of the extremely moderate protection afforded by the act of 1816, no doubt in expectation that the strong public sentiment in the Northern States would prevail in favor of higher duties to be laid for the express purpose of encouraging the industry, the investments in woollen factories had increased quite largely. The woollen manufacturers of Massachusetts were numerous enough, in 1823, to meet in convention and adopt a memorial to Congress praying for an increase of duty. It would be a mistake to suppose that the industry was already established in a posi-

tion even to continue in a languishing existence, without the aid of a tariff. Taussig, in his "Tariff History,"¹ says that "by 1815, the work of establishing the manufacture had been done," and although he concedes that the duties from 1816 to 1828 may have done something to sustain it, he thinks the industry would have survived without those duties. It can only be said that no evidence is forthcoming to support these assertions. It is true a considerable number of factories built during the period are a superficial bit of evidence on the point. Apparently, however, the establishments were experimental. Enterprising citizens endeavored to cheapen the cost of goods previously produced in a household way only, by applying machinery and the factory system to the industry. Many of them failed; none were more than barely prosperous. They lived in hope, and if their hope had been wholly dispelled would have abandoned the struggle for existence.²

This view of the matter is in full accordance with a statement regarding the tariff upon woollen goods in the act of 1824, in a contemporary and trustworthy authority.³ The Annual Register, explaining the origin of the Woollens Bill of 1827, says that many of those who were opposed to the system of protection generally favored an increase of duty upon woollen goods, as an article for which the country ought not to be dependent upon other nations; but it adds that this sentiment was far from unanimous. It proceeds with the following significant and enlightening passage: "The manufacturers feared that an increased duty on foreign cloth would be accom-

¹ Page 45.

² Grosvenor, "Does Protection Protect," p. 142, makes the depressed condition of the woollen manufacture at this period a ground of criticism of the protective system, implying, but not asserting, that the manufacturers had obtained the duties they desired on the goods of their foreign rivals, and that the result was their ruin. The premises and the conclusion are alike unsupported by the facts of history.

³ "American Annual Register," vol. ii. 1826-27, p. 103.

panied (and its beneficial effects to them counterbalanced) by an increased duty on wool. The capitalists who had embarked in the business with extensive resources and improved machinery were inclined to ascribe the languishing conditions of the manufacture to the imperfect manner in which it had been hitherto attempted; and feared that the effect of an increased protection would be a destructive domestic competition. From these and other causes the efforts of those engaged in this manufacture to obtain a substantial increase of protecting duties were less united and earnest than might otherwise have been expected, and in the final passage of the bill a smaller increase of duty on foreign cloth was provided for than was thought requisite by the zealous friends of the measure; and the effect of this was seriously counterbalanced by the increase of duty on imported wool."

If we may accept the foregoing as a true representation of the situation, — and the preliminary expressions by the writer of it show him to have been an opponent of the protective policy, — we may fairly suppose that the new woollen factories of the time were erected by men of capital who reasoned from the success of the Waltham cotton mill that this country could in like manner carry on the woollen industry in competition with Great Britain, by adopting the principles of a free use of machinery, a large scale of production, and skill in manufacturing. They were therefore not strenuous about a large increase of duty, which they apprehended would injure them by unduly increasing profits, and thus leading to an overproduction of goods. Those who had carried on the business in a small way, on the other hand, were sure that they could not manufacture at a profit unless the tariff were raised. The divided sentiment of manufacturers worked in favor of the advocates of low duties; and those who had been indifferent or hostile on the sub-

ject of additional protection were not long in discovering that the conditions surrounding the woollen industry differed widely from those which permitted the cotton spinners and weavers to prosper.

Although more than a whole week of the session was devoted nominally to the discussion of the clauses of the bill relating to cotton goods, less consideration was given directly to this, than the most important of American manufactures, than to any other of the controverted matters. The reason is plain. The bill did not propose to raise the rate of duty but to change the minimum from 25 to 35 cents. Under the law of 1816 all goods costing less than 25 cents a square yard were assumed to have cost 25 cents and were assessed for duty accordingly. This was equivalent to a specific duty of at least $6\frac{1}{2}$ cents per square yard. Competition lowered the actual cost of goods so much that the duty became prohibitory, and the American manufacturers no longer feared their foreign rivals in the production of coarse and ordinary goods. The raising of the minimum would have no effect upon them, since they were already virtually excluded; but it would enable the home factories to make finer goods. The efforts of the anti-protectionists were directed to abolishing the minimum altogether. The advocates of the bill had to be content with an increase of the minimum to 30 cents. It does not appear that the change had a perceptible influence upon the progress of the cotton manufacture in either direction.

Two of the most noteworthy contests took place — one upon the hemp and cotton bagging duties, the other upon iron. The first possesses interest chiefly because it was upon the articles about which the people of Mr. Clay's State of Kentucky were most concerned. Like the high-minded statesman he was, Clay showed himself no more and no less earnest in urging the imposition of protective duties upon hemp and cotton bagging than upon woollen

and cotton goods and iron. He maintained that the chief object of protecting manufactures was that of conferring a benefit upon agriculture by enlarging and steadying its market. He felt sure that Kentucky could enlarge its list of agricultural productions by adding hemp to it; and that it could turn the raw material into bagging for the cotton of the more Southern States. His propositions were opposed at every turn. The Northern opponents of the bill wanted free hemp for the benefit of shipping; the Southerners wanted free bagging for their cotton. The original proposition of the Committee on Manufactures was a duty of two cents a pound on hemp and of six cents a square yard on cotton bagging. As finally passed the act imposed a duty of \$35 a ton on hemp and of $3\frac{3}{4}$ cents a square yard on bagging. The Senate rejected the cotton bagging duty altogether. Its disagreement with the House on this point was one of the two matters submitted to the committee of conference, and the Senate receded from its amendment.

The debate upon the iron duties was much less interesting than might be supposed from the importance of the article, from the previous controversies in regard to it, and from the prominence in the scheme of protection which it afterward held. The only speaker on either side of the question who said anything which is much worth reading at the present day was Mr. Webster. The duty on iron bars under the act of 1816 was 75 cents per hundredweight. The proposition of the Committee on Manufactures was to increase the rate to 112 cents. There were prolonged and often-renewed struggles over the clause. The opponents of the bill endeavored to prevent any increase of the duty, its friends to retain the highest rate suggested. The result was the adoption of a duty of 90 cents, which there is reason to believe gave the country all the evils of a high tariff and none of its benefits. The increase was not sufficient to cause any

substantial enlargement of the home product, to induce investment in industrial establishments, or, by the prospect of continued government encouragement, to lead to the adoption of costly improved methods, which had given the cotton industry success and the woollen industry hopefulness. At the same time it added perceptibly to the burdens upon shipbuilding and agriculture. The situation of the iron-makers was not appreciably different from that which had been set forth in previous debates. It was, as it had long been, difficult if not impossible for those of them whose works were near the coast to produce iron at a living profit in competition with the foreign article. It has been asserted by some writers, on the strength of the fact that at various times the domestic iron-makers had produced nearly enough to supply the home demand, that the industry was already established and therefore needed no tariff encouragement. This proposition cannot be maintained. The industry had never been fairly prosperous save when foreign competition was cut off artificially by causes other than the tariff. If it be asserted that the reason of its non-success lay in the non-adoption of the best methods of production, that assertion is itself an admission that the industry was not established.

The iron-makers of the interior were able to hold their markets. The rates of transportation were their protection in days when there were no railroads, and when there was neither river nor canal communication between the furnaces of the interior and the seaboard cities. The advantage was of little value to them. The local demand for iron was small; and the costly transportation which helped them in a small way at home injured them when they proposed to send their wares to the larger distant markets. In these circumstances no tariff protection would be adequate which did not counterbalance the cost of transportation both ways,—to the interior furnaces from the seaboard and back to the coast. It was cer-

tainly asking a great deal to make a demand upon Congress for a duty sufficient for that. In bringing out the facts regarding the relation between the foreign and the domestic manufacture, Mr. Webster made one of his most lucid arguments. He said that the workmen in the iron mines of Russia and Sweden earned no more for their labor than seven cents a day. The further fact that the freight rate from Sweden had been as low as eight dollars a ton, which was not more than the cost of fifty miles of land transportation in the United States, led him to make the following striking observation: "Stockholm, therefore, for the purpose of this argument may be considered as within fifty miles of Philadelphia. Now it is at once a just and a strong view of this case to consider that there are within fifty miles of our market vast multitudes of persons who are willing to labor in the production of this article for us, at the rate of seven cents per day, while we have no labor which will not command upon the average at least five or six times that amount. The question is, then, shall we buy this article of these manufacturers and suffer our own labor to earn its greater reward, or shall we employ our own labor in a similar manufacture and make up to it, by a tax on consumers, the loss which it must necessarily sustain?"¹

The argument was an exceedingly strong one from every point of view save that of the policy of establishing the industry at home and rendering the country independent of a foreign supply. There was no attempt to deny that the effect of the high duty would be to raise the price of iron and to tax consumers; but it was contended that the effect would be only temporary,—that the encouragement asked for would lead to home competition and an ultimate cheapening of the product to the foreign level. The country would then have gained, with respect to this article, the industrial independence which

¹ "Annals of Congress," Eighteenth Congress, first session, p. 2065.

it sought, and the manufacturers would find their compensation for lower prices in the ability to produce a larger quantity and in the secure possession of a market in which to dispose of it.

The debate in the House on two proposed amendments was interesting rather than important. In both encounters Mr. Webster was too sharp for his opponents, although they had the advantage of a greater number of votes. A motion was made to strike out the duty of twenty-five cents a bushel on wheat. It was easy, of course, to jeer at the notion of taxing the importation of wheat into a country which was proposing to revise its tariff in order to give a market for grain crops rotting in the fields and barns. Then it came out that the purpose was to stop the trade in wheat between Canada and Europe through New York; and Mr. Webster again made sport of the members from that State, and of their efforts to put a stop to what must be a profitable traffic. But he had a still better chance to make fun—in a somewhat ponderous way, it must be admitted—of the proposed tallow duty, imposed for the protection of New Bedford whalers who did not relish the competition of tallow candles with their oil and spermaceti; and opposed by the soap-makers. Similar difficulties in adjusting rival claims to protection have frequently given tempting opportunities to free traders inclined to irony.

Thus far the tariff bill of 1824 has been considered almost exclusively with reference to its fortunes in the House of Representatives. Indeed there is little that need be said of its progress through the Senate. The speeches there made were distinctly inferior to the best of those made in the popular branch of Congress. Nothing of value either in ideas or in the manner of presenting them was added to the discussion that had already taken place. The academic arguments *pro* and *con* on the subject of protection as an economic fallacy are always dull and

valueless. Those delivered in the Senate in the spring of 1824 were particularly tedious in the presentation of threadbare matter. One remark only will be quoted here from the whole debate, a passage chosen because, coming from a Southern senator and being pregnant with political significance, it serves well to introduce the last group of topics to be considered in this chapter. Mr. Hayne, of South Carolina, toward the end of a long speech, delivered on April 30, said :¹ —

“I must be permitted while on this topic [the constitutionality of the bill] to declare that, however this bill may be modified, still the system is one against which we feel constrained, in behalf of those we represent, to enter our most solemn protest. Considering this scheme of promoting certain employments at the expense of others as unequal, oppressive, and unjust, viewing prohibition as the means and the destruction of all foreign commerce the end of this policy, I take this occasion to declare that we shall feel ourselves justified in embracing the very first opportunity of repealing all such laws as may be passed for the promotion of these objects. Whatever interests may grow up under this bill, and whatever capital may be invested, I wish it to be distinctly understood that we will not hold ourselves bound to maintain the system; and if capitalists will, in the face of our protests and in defiance of our solemn warnings, invest their fortunes in pursuits made profitable at our expense, on their own heads be the consequences of their folly!”

A fair warning, surely. Senator Hayne could have had not even a prophetic premonition of the way in which he and his cause were to gain a victory. At that time South Carolina and the other cotton States were allied with New England against the bill and against the protective system. The Middle States and the West, including Kentucky, were in favor of the tariff. It was an alliance of the rapidly growing States against the States of stagnant

¹ “Annals of Congress,” Eighteenth Congress, first session, p. 649.

population, and the triumph of the hour was already with that part of the country which seemed destined at once to take and to retain the control of government policy. Yet the influence of slavery was before many years to consolidate opinion throughout the South, and, by the medium of party discipline, to obtain a sufficient number of adherents to its policy in the North to constitute a majority and to substitute its own policy for that which seemed, in 1824, at the beginning of a long career of success.

Let us analyze the attitude of the manufacturers whom Mr. Hayne warned, of sections of the country, of parties, and of politicians, toward the tariff. Aside from the memorials which were addressed to Congress in advocacy of a protective policy, the manufacturers seem to have exerted a direct influence in favor of the bill, — to have been present in Washington during the preparation of the measure and during the debates, and to have promoted the cause by what one terms personal persuasion, lobbying, or button-holing the members, according as one is a supporter or an opponent of the measure to be promoted. Mr. Cambreleng accused the Committee on Manufactures of having adopted in every instance the rates proposed by the manufacturers themselves, and declared "that the manufacturing members of this House, probably some fifty or sixty, have furnished to the committee the rates which are specified in the bill." Mr. Hamilton insinuated that there had been "more outdoor than indoor legislation in regard to the bill." He had been informed that "all sorts of pilgrims had travelled to the room of the Committee on Manufactures, from the sturdy ironmaster down to the poor manufacturer of whetstones, all equally clamorous for the protection 'of a parental, of an American policy.'" Mr. Hamilton preceded these remarks by a swaggering assertion of his own responsibility, "both in this House and out of this House," for whatever he might say "even in the intemperance of his zeal." Mr. Tod, in

replying to Hamilton the next day, gave a fine rebuke to his truculence, and in reference to the accusation against the committee said that as to the persons who had attended it on the invitation or without the invitation of the committee, "it is due to them and to us to say that they have all been citizens of our country and gentlemen of good appearance and good credit. And it may be further said that among the few of them who had any particular interest and manufacture to promote there has been scarcely one who has not gone away disappointed." There is almost always an exaggeration of the part played by manufacturers in influencing the preparation of protective tariffs, as there is on the part of protectionists a tendency to characterize the action of their opponents as heartless and un-American. There is no doubt that nearly all the manufacturers in the country, in 1824, were in favor of a general system of protection, whatever their individual action to promote the policy may have been. The one notable exception was the group of cotton manufacturers who had built the Waltham factory, and who had started the wheels of the Merrimac mill, the first erected at Lowell, but a few months before the debate occurred on the tariff of 1824. They were opposed, at the time, to an increase of duties. Mr. Samuel Slater, the father of the manufacture in the United States, was in favor of the high tariff, and is the only manufacturer who was mentioned in the debates as being present to urge the extension of the minimum clause on cotton goods. There seem to have been, beside the indifferent or hostile cotton manufacturers, some also among the woollen manufacturers who occupied a position somewhat similar; but how extensively the opposition to a considerable increase of duty pervaded those engaged in the industry there exist no means of ascertaining. Clearly, if it had been widespread, evidence of it would have appeared in the debates, where it is not to be found.

Enough has already been said to indicate, in a general way, how the people of the several sections of the country stood affected toward the tariff. On the passage of the bill in the House, had the Speaker and two absent members voted, and had the vacancy from Massachusetts been filled by an opponent of the bill, the vote would have been 110 to 103. Maine, New Hampshire, and Massachusetts would have given 3 for the bill; 23 against it. The other three New England States, 12 for the bill; 1 against it. The Middle States, including Delaware and Maryland, 61 for the bill; 15 against it. The West, — Ohio, Indiana, Illinois, Kentucky, and Missouri, — 31 for the bill; none against it. The South, 3 for the bill; 64 against it. The division in the Senate was full on the vote passing the bill to a third reading, — 25 in favor, 22 opposed. No member was absent, but one of the seats for Illinois was vacant. The sectional character of the vote differed slightly from that in the House. All New England gave 9 votes for the bill; 3 against it, — 2 from Massachusetts and 1 from New Hampshire. The five Middle States gave 5 votes on each side, those in the negative being 2 each from Delaware and Maryland, and 1 from New York. The West gave 9 votes for the bill; none against it. The South stood 2 votes, both from Tennessee, for the bill; 14 against it.

The singular facts regarding the sectional division upon the tariff bill are, that two regions which were, or hoped to be, manufacturing regions were ranged on opposite sides; and that two other regions almost exclusively agricultural separated from each other in the same way. New England, on the whole, believed that its industrial progress did not need a protective tariff; the northern Middle States were sure they could not prosper without protection for iron, glass, and other things. The West was persuaded that its salvation depended upon the establishment of a steady home market for its grain. The South was still more strongly convinced that a protective tariff

would limit its market for its great staple of cotton, and render more expensive all the foreign merchandise which it must of necessity import. New England was to change its attitude before the next great contest; the West, and some Northern States, were gradually to fall under the influence of the South, through political alliances; and only Pennsylvania on the one hand, and the South on the other, were to be true to the principles they held in 1824. The South, indeed, was to become firmer, and more aggressive in its attack upon the policy now triumphant; and, by its domination of one of the parties soon to be formed, was ultimately to substitute its own policy and secure its ascendancy so long as the political power of its "peculiar institution" of slavery existed.

In 1824 there were no political parties in the United States. But a presidential election was pending, and there was a plethora of candidates. The congressional caucus had presented Mr. William H. Crawford, the Secretary of the Treasury. John Quincy Adams, the Secretary of State, was the candidate of New England; Henry Clay, Speaker of the House, was proposed by the legislatures of Kentucky and of other Western States. Andrew Jackson, a senator from Tennessee, was a rival candidate from the West, with strong Southern support and many friends in the North. John C. Calhoun, Secretary of War, who had been brought forward by his own State of South Carolina as a candidate for the presidency, had withdrawn from the race for that position and was contenting himself with the sure prospect of being chosen Vice-President.

In those days "platforms" were as unknown as national conventions, and since parties were as yet unformed, "the man was the platform." So popular was the protective idea, so secure seemed its future as a national policy, that all the candidates for the presidency were, or were represented to be, in favor of it. Mr. Clay was its stoutest champion. General Jackson's name was on the

list of those supporting protection in almost every division in the Senate; and he, with his friend and colleague from Tennessee, Senator Eaton, saved the act of 1824 from defeat on its passage to a third reading. Mr. Adams was understood to be in favor of the bill, although the duties of his office did not require him to express an opinion upon it. Even Mr. Crawford, a representative of the cotton growing country, was declared to be in favor of the bill, and his reports could certainly be quoted in support of protection.¹ However that may be, he did not make his position known publicly. All the candidates could and probably did gain or retain some votes by letting it be understood that they sympathized with the then prevailing sentiments of the people. At the same time, those who were opposed to a candidate's economical views could vote for him without incurring the risk of defeat through executive action. Up to that time no President had ever vetoed a bill passed by Congress on the ground of his individual opinion as to the expediency of the act. All vetoes had been based on constitutional objections exclusively. The facts recited will serve to indicate how far political considerations operated to influence the action of Congress on the tariff in 1824. There was a perceptible influence; but it is one to be suggested and inferred rather than to be described. Perhaps the most significant feature of it all was the frequency and persistency of General Jackson's efforts to show himself a friend to protection, which it is not uncharitable to suppose were intended to counteract the effect of the prominence in tariff matters of Mr. Clay, whom he regarded as his most dangerous rival.²

¹ Benton says that Mr. Crawford was opposed to the bill ("Thirty Years' View," vol. i. p. 34).

² See Niles's "Register," vol. xxiv. p. 357; also vol. xxvi. p. 245, letter of General Jackson to Dr. L. H. Coleman, from which the following is an extract: "Draw from agriculture this superabundant labor; employ it in mechanism and manufactures, thereby creating a home market for your breadstuffs. . . . In short, sir, we have been too long subject to the policy

His letters read like an echo, somewhat roughened in the reverberation, of Mr. Clay's speeches. Yet even in his expressions at this time he was careful always to assert that he favored a "judicious" tariff, — the qualifying word was always the same, — and thus gave himself an opportunity to withhold approval of any proposition which did not seem to him judicious, as he afterward reserved full liberty of action in the office of President by his gloss on the oath to support the Constitution — as he understood it. A full exposition of General Jackson's attitude in 1824 is both interesting and important, in view of his subsequent prominence in public life, and his leadership of the political party yet to be formed, which a few years later inscribed Free Trade on its banner.

of the British merchants. It is time that we should become a little more *Americanized*; and, instead of feeding the paupers and laborers of England, feed our own; or else in a short time, by continuing our present policy, we shall all be rendered paupers ourselves."

VIII

THE "BILL OF ABOMINATIONS"

THE year 1824 marked the end of the "era of good feelings." For several years there had been no organized political parties in the country. Election contests turned mainly on personal considerations; and if the political principles of candidates were called in question, the inquiry was rather what their principles had been than what they were now. Upon no two of the questions that divided public opinion did the lines of division coincide. There were no leaders who had ascendancy over a body of followers.¹ Nowhere was there a central political authority, or a rallying point of political thought. The people of the time mistook the absence of partisan animosity for the existence of political harmony; and the age seemed to them the dawn of the republican millennium. All that had happened, nevertheless, was that the old party lines had been obliterated by the closing of the questions that had separated men into parties; and that the newly arising issues had not yet attained sufficient importance in public discussion to become the basis of another party grouping. Yet there were two matters of national policy upon which opinion was already in a state of agitation and of increasing excitement, which were destined to engross public attention for many years, and — which is more important — to mask and even to hide for a time that greater issue

¹ Mr. Clay is an apparent exception. His personal magnetism and influence were great, but they were exerted occasionally only, for special purposes, as in the case of the Missouri Compromise. Afterward, no doubt, he became in a true sense a party leader.

which would ultimately involve the country in civil war. The controversies that raged about a protective tariff and internal improvements were, when parties should be fully formed, to give a long term of security to the institution of slavery.

It is by no means intended to assert that the genuine free traders of the North, who were numerous, intelligent, and honorable, were either the willing allies or the dupes of that which is conveniently and not incorrectly termed the slave power. Circumstances obliged them and their followers to give to the upholders of the slave system assistance which they gladly would have withheld. For, in the first place, opposition to a protective tariff and to internal improvements became less and less an opposition based on considerations of expediency, and more and more one which relied upon the contention that under a strict construction of the Constitution Congress had no right to enact a tariff save for revenue, nor a right to appropriate money for roads and canals. Since a strict construction would certainly also forbid interference with the existence and the extension of slavery, the Northern anti-tariff men were logically compelled to be silent and to acquiesce when the slave power rested its argument on this point. In the second place, the prominence which these two questions and others allied to them soon assumed, served to divert attention from the question of slavery to a certain degree. And, finally, since the Southern people were overwhelmingly against protection, whereas free trade was in a minority at the North, it followed that the South held control of the party which advocated free trade, furnished most of the candidates for high places supported by that party, and tolerated no Northern candidates who antagonized the "peculiar institution" of the South.

The period now to be considered witnessed important phases of the radical change which took place in the character of the tariff discussion. We shall read the history

of these years more intelligently if we first glance in review at the change which had already occurred. Washington urged the policy of protection mainly on the purely national grounds of the importance of rendering the country independent of a foreign supply of articles needed in time of war, and of the desirableness of diversifying industry.

The system was opposed, not strenuously, by the academic argument against restrictions on trade, and also antagonized as imposing unequal burdens upon the poorer and more sparsely settled regions, which happened at that time to be the southern and interior parts. Local interest in favor of protection, which had been but slightly manifested in the earliest years, was shown more strongly in the second period, that after the war of 1812; but both of the strictly national arguments by which the policy had been originally supported were so strengthened by the events of the war that nearly all the public men of the time were favorable to the encouragement of manufactures. The commercial interests which had sometimes prospered exceedingly and again suffered extremely, and which were now prostrated by the return of peace in Europe and the renewal of old and harassing regulations by Great Britain, resisted a measure from which they feared further injury. The South still gave much more opposition than help to the movement to sustain the manufactures brought into being by the war, but the people of that part of the country were not yet unanimous against protection. The controversy at this time cannot be regarded as sectional. All the influences mentioned became stronger and more intensified after 1816. The manufacturers put forth more urgent and confident claims to government aid; the shipping and importing interests protested more earnestly against tariffs which impeded trade on the ocean; the South averred with increasing energy that the policy of protection both taxed that section for the benefit of the wealthier North and injured the market for its great staple of cotton. That the division of

opinion was becoming more decidedly sectional in character appears from the fact that only by the redistribution of power effected by the apportionment following the census of 1820 were the protectionists enabled to obtain a partial victory in 1824, — a triumph which was less than complete because commercial Massachusetts joined with the agricultural South to prevent it. Although all the influences just mentioned were essentially selfish in their nature, it would be untrue to say that they predominated in the councils of either faction. No one can study the progress of the discussion candidly without perceiving and admitting that the most powerful champions on either side were men who had no pecuniary or other personal interest to serve, and that the strongest arguments employed were drawn neither from the benefits to be conferred upon communities and favored industries on the one hand, nor from the injuries apprehended by the South on the other. The mixed character of the motives to action in the one direction or the other, and the necessity of consolidating opinion for concerted effort, tended inevitably to remove the question — so far as it was one for the decision of Congress — from the field of economics to the field of politics. That was the great change that took place in the period we are now about to consider.

The feature of the tariff campaign which ended in the passage of the act of 1828 is the enormous outpouring of literature upon the subject. The protectionists were first in the field. Hezekiah Niles and Mathew Carey were the leaders in a propaganda unlike any other in our history. Niles established his "Register" at Baltimore, in 1811. Always an advocate of manufactures, he made the "Register" more and more a means of promoting the cause of protection until his championship of the "American system" became the absorbing passion of his public life. He held his opinions from the sincerest conviction, unmixed with selfish interest. He was the most magnanimous of disputants, incapable of garbling the language

of his opponents in the smallest degree or of suppressing any part of their arguments, severe only when his own words were perverted or when his position was misrepresented. In selecting speeches to illustrate debates, he invariably chose for insertion in the "Register" the strongest on each side, and made it a point to give an equal number of them, or at least an equal amount of space, to friends and opponents. His guileless frankness, his conspicuous fairness, the absence of any motive save a profound belief that the causes he advocated were for the general welfare, secured for him the respect of all men and added immensely to the weight of his opinions on public questions. Since he was a close and intelligent student of politics, an expert in statistics, and a writer of clear and strong English, —although he was commonly diffuse,—his influence in moulding the thought of his readers was great. His constituency was the best-informed part of the community in every part of the country. Those whose judgment he did not affect directly he reached through the medium of scores of editors of local newspapers, under the system of exchanging publications, who found facts, arguments, and principles ready-made in the well-filled columns of the "Register." No man did more than Mr. Niles to sow the seed of protectionism, or to strengthen the plant and protect it from destruction when the "tares" of free trade threatened to choke it.

It is difficult to estimate accurately the extent of the influence of Mathew Carey. Like Niles, he was a man of the highest character, and if it were possible more unselfish than Niles in advocating the policy of encouraging manufactures. For he did not even recover the cost of his literary ventures by the sale of copies of a newspaper. He neglected his business in order to promote the cause and bore unaided the expense of his private campaign for protection. Few men have been more prolific than he of essays, addresses, and pamphlets upon a single

topic. A large part of what he wrote is now hard reading; much of it may even be characterized as unreadable. Yet one must believe that the writers of numerous complimentary letters were not merely flattering him when they declared that the services he had rendered to the cause of protection were of inestimable value. Men said the same thing when they wrote of him, as well as when they wrote to him. The truth of all this testimony compels us to infer that our grandfathers were so interested in the subject that they could read with avidity essays from which even the students of the tariff controversy in later days turn with speedy weariness. It is a fact that Mr. Carey was held in high honor by his contemporaries as a powerful agent in forming public opinion. Yet there are indications that his own opinion of his services was higher than that which was universally held by his coadjutors on the protection side of the controversy.¹

¹ Toward the end of his public and literary career his grievances were frequently brought to the attention of his readers in a way to move the present generation more to amusement than to sympathy. He hinted broadly to some of the wealthy manufacturers in Boston and Philadelphia that it would be agreeable to him if they would reimburse to him a sum of \$570, expenses he had incurred in printing and distributing pamphlets in support of manufactures and in promoting the passage of the act of 1828. In his own words, for he took the public into his confidence in this matter, "they all with one consent began to make excuse." The reason for refusal which angered him most was that they had not employed him to take up their cause. He admitted that he had no legal claim upon them; but would it be an act of gratitude, he asked, for a man whose house had been burning to evade payment of a loss suffered by one who voluntarily exerted himself to extinguish the flames? Mr. Carey paraded the commendatory letters of the ungrateful manufacturers to show what they thought of him when he was working gratuitously in their interest. At another time he complained somewhat petulantly because he was passed by in the formation of a committee to prepare a tariff address, a slight which he attributed to the jealousy of men of less, and more recent, prominence in the discussion. To show what he had done, he proclaimed that since 1819 he had written and published 57 pamphlets, covering 2295 pages, on the subject of protection, beside numerous newspaper essays, circulars, and memorials to Congress. When Nullification threatened to destroy the Union, he prepared an elaborate epitaph upon the

The free traders did not begin their "campaign of education" until it was too late to prevent the enactment of the tariff of 1828. There were many newspapers which took an anti-protection view of the question and argued it with vigor. With one or two exceptions, they had no more than a local influence. Even the "National Intelligencer" and the New York "Evening Post" had far less power than Niles's "Weekly Register" and Carey's pamphlets. After the failure of the woollens bill in 1827, when the deliberate purpose to move on Congress at the next session became evident, the free traders took alarm and entered upon the campaign with great spirit. Their method, which was also employed by the protectionists, was to hold county or district meetings, at which a long and argumentative address or memorial to Congress was adopted. Printed and circulated in the neighborhood, it became both a local "platform" on the tariff and a means of disseminating the arguments on which the opposition relied. The system was peculiarly adapted to the conditions prevailing in the South, where there were few newspapers. Inasmuch as the memorials laid great stress upon the injustice to Southern interests alleged to be involved in the adoption of the protective policy, public opinion in that part of the country was much more consolidated than it was at the North, where meetings were held by both parties. The fifth "Finance" volume of the American State Papers contains several hundred folio pages of resolutions of State legislatures

Republic, and appended to it a statement, to be inscribed upon the monument, that the epitaph was written by one who had advocated protection "for thirteen years with occasional intermissions (in one only at the commencement had he any effectual support; for six — not consecutive — he was wholly without the least coöperation on the part of those whose interests he was advocating, and the coöperation in the other six was feeble)." In this very complaint, puerile as it is on the part of the writer, we read a contradiction of the assertion so commonly made that the protection movement originates and ends with those who are seeking government aid for their enterprises.

and memorials by public meetings of citizens in relation to the tariff. Most of them were the production of a few months — after the defeat of the woollens bill of 1827, and before the enactment of the tariff of 1828. Some features of this literature will be referred to hereafter.

It is always an interesting historical study to distinguish the influence of minor incidents on the course of events, and to speculate upon the momentous consequences of slight modifications of the conditions under which those events occurred. The circumstances in which the tariff act of 1824 was passed offer a tempting field for speculation of this sort. What would have happened if the narrow majority of five in favor of the bill in the House of Representatives had been wiped out? Perhaps the result would have been the passage, in 1825 or 1826, of an act better suited to the wants of the country than either the act actually passed or the law of 1828; and the country might have been spared much political agitation, including the incident of South Carolina nullification. It has been held by some writers that the defeat of the protectionists might have been final, and that the whole fiscal history of the government would have been changed.¹

Whatever might have been the consequences of the

¹ Peck ("The Jacksonian Epoch," p. 94) takes this view: "Had Clay thrown against it" — the tariff bill of 1824 — "the weight of his great influence and authority, protection in the United States, with all its attendant and lineal evils, would have met a signal and probably an abiding repulse. To aid him in his efforts to attain the glittering but transient distinction of the presidency, he sacrificed one of the noblest opportunities of modern times, not only to benefit his country, but the world, and to earn a place among the few whose names are jewels in the crown of statesmanship." The present writer accepts the view that any man's authority would have been sufficient to check protectionism permanently, as little as he accepts the opinion as to the baneful effects of that policy. The suggestion that Clay was capable of abandoning at will the principle for which he had contended during his whole public life, and that his tergiversation, however successful, would have won him credit and honor in the eyes of posterity, is one that needs only to be made to be rejected.

rejection of the tariff bill of 1824, it is most probable that a single feature of the act led to a mischievous result that would have been avoided in whole or in part by a change of that clause. It may or may not have been the indifferent attitude of some woollen manufacturers that determined the policy of Congress in fixing the duties on wool and woollen goods. That the rates left the industry in a perilous position, and that a measure adopted by the British Parliament, to be noticed hereafter, threatened it with ruin, became evident soon after the law went into operation. The appeal made by the manufacturers for a revision of rates was answered by the woollens bill of 1827, which was defeated by a united South, helped by a section of Middle States protectionists who opposed granting relief to the woollen industry unless the comparatively slight disadvantages which certain of their own local industries suffered under the new tariff were also removed. It is consequently a position that may be logically defended, that if the act of 1824 had been framed with more intelligent regard for the woollen manufacture, numerous evils which resulted from throwing the tariff question into politics would have been avoided or postponed; since the woollen industry was the only important one whose necessities would have demanded taking up the tariff question again for many years to come. How the operation of the tariff, as it was actually passed, developed the new movement for a revision we are now prepared to consider.

The tariff of 1824 seems to have given general satisfaction during the two years that followed its enactment. Niles's "Register," which was never silent when the subject of encouraging manufactures was broached, contains hardly a reference to the tariff after 1824 until the autumn of 1826. It once notes that the Richmond "Enquirer" informs its readers that the late tariff law plundered the planters for the benefit of the manufacturers; in response to which Mr. Niles challenged the editor to name any

single article the price of which had been increased by the tariff. The only benefit manufacturers had derived from the act, he insisted, lay in the safety of their invested capital.¹ Again,² he pointed with satisfaction to the fact that the tariff did not, by diminishing imports, affect the revenue injuriously, as the opponents of the bill predicted it would do. And in the same volume,³ he expressed satisfaction at the remark of a Virginia writer that since the tariff was not likely to be reduced, it was wise for the people of Virginia to "establish factories and enjoy its bounties." It is well to give particular attention to both these passages. The first implies what every intelligent advocate of protection then and ever since has maintained, namely, that a high tariff for purposes of protection is not levied necessarily with a view to causing a diminution of imports, does not necessarily diminish them, and does not invariably fail of its purpose when it does not diminish them. The steadiness of the market may be even more important than the exclusive possession of it. Mr. Niles's pleasure at the proposal to build factories at the South is also quite compatible with his wish that the factories already erected should be put beyond the reach of injurious foreign competition. It is, to be sure, not compatible with the motive usually imputed to protectionists by free traders, which is assumed to be purely a desire to increase the profits of manufacturers. Mr. Niles and a vast majority of those who then and at all other times have advocated the protective policy put the prosperity of the whole country as the first consideration; and held that it was best to be secured by establishing manufactures and, by encouraging them, producing domestic competition which would eventuate in prices permanently as low as foreign prices. He therefore welcomed the home competition as completing the process set in motion by the protective tariff.

¹ "Register," vol. xxix. p. 50.

² *Ibid.* p. 129.

³ *Ibid.* p. 193.

The first step in the movement which led ultimately to a new tariff on certain manufactured goods was taken at Boston on the 14th of September, 1826.¹ A meeting of woollen manufacturers was held on that day at the Exchange Coffee House. The depressed state of the industry was fully set forth and it was unanimously voted to petition Congress for an increase of duties.² At an adjourned meeting held on October 23, a memorial was adopted in which the reasons for the request were given at length.³ It was shown that as the quantity of wool produced in the country was quite insufficient to supply the home demand, an importation of wool was necessary, and that the cost of the foreign article controlled the price of the domestic supply. The tariff of 1824 had increased the duty on foreign wool 15 per cent., yet the duty on manufactured goods was advanced but 8 per cent. Events abroad had reduced the price of wool in England. The tariff and charges upon foreign wool, amounting to fully 50 per cent., laid a heavy burden upon the home manufacturer. The English manufacturer had an advantage not only in this circumstance but in a lower rate of wages to labor; and his situation was further improved by the system of assessing duties *ad valorem*, and by the opportunities which that method gave him to evade the impost. English manufacturers had flooded the market with their goods. At first they had derived large profits from the export, but latterly they had been disposing of their fabrics at or below cost, by auction. Meanwhile half the machinery in the New England woollen factories was idle, and those concerns which had erected large factories in the hope that the tariff of 1824 would enable

¹ Perhaps we should say the first public movement was then taken. Niles (vol. xxxiv. p. 187) says that the movement had its origin in Pennsylvania, in 1825 or 1826. He calls attention to the fact that until 1826 public opinion in New England was decidedly adverse to a change in the tariff.

² Niles's "Register," vol. xxxi. p. 105.

³ *Ibid.* p. 185.

them to operate in security from ruinous foreign competition had suspended altogether, awaiting relief in a readjustment of duties. The manufacturers did not ask for any change in the duty on wool; to increase it would add to their burdens; they were hopeful that the existing high rate would induce competition, increase the home production, and lead to a lowering of the price. Nor did they ask for an increase of the ad valorem duty on manufactured goods, but for specific duties upon yards of cloth, with the adoption of the "minimum" principle. "Such a measure," they said, "may protect the manufacturer. It can injure no one. No class of men in this community can prosper without all partaking in their prosperity. The price of goods to the consumers here can never be increased to their injury; competition among our own citizens will prevent it. All experience proves, especially the experience of American manufacturers, that no class of our citizens can long continue in the exclusive enjoyment of any lucrative branch of business. Competition will reduce their gains to a fair and reasonable standard. To that standard we are willing to conform."

A circular subsequently sent to manufacturers urged organized effort on their part to secure favorable action by Congress and to arouse the people to the importance of granting relief to the woollen industry. In all the literature put forth in support of a new tariff on woollens it is tacitly assumed, and it is no doubt true, that it was only necessary to show that the existing duties did not adequately protect the industry in order to induce the people to favor such a revision as would enable manufacturers to meet foreign competition and not be destroyed by it. There is no attempt to argue the desirableness of protection, no apology for asking relief, no suggestion that the measure they proposed was a selfish scheme to enrich themselves at the expense of the rest of the community. The time was not far distant when they and all protection-

ists were to be driven to take an attitude of defence; at present all whom they addressed were either heartily in favor of protection or too timid to confront an almost overwhelming public opinion in favor of the policy.

Numerous petitions were presented to Congress during the month of December, 1826, from wool growers and manufacturers asking for further protection. The petitions are not printed in the "American State Papers," but it is evident that at this time the interests of the growers and manufacturers of wool were not regarded as in any degree antagonistic. The manufacturers conceded the propriety of full and adequate protection to the sheep-raisers and urged that the effect of the measure, by inducing strong competition, would be to give them in a few years a full supply of domestic wool. The wool growers on their part were persuaded that ample protection to the makers of cloth was essential to give them a market large enough to consume their product. The petitions were referred to the Committee on Manufactures, and on the 10th of January, 1827, Mr. Mallary, of Vermont, the chairman of the committee, reported the famous woollens bill. It did not change the ad valorem rate on manufactures of wool — $33\frac{1}{3}$ per cent. — but established three minima. All such manufactures (except worsted stuffs and blankets) costing less than 40 cents a square yard were to be rated at 40 cents for the purpose of assessing duty; all costing between 40 cents and \$2.50, at \$2.50; and all costing between \$2.50 and \$4, at \$4. Unmanufactured wool was to be charged with a duty of 35 per cent. for one year after June 1, 1828, and thereafter with 40 per cent. duty, and all wool costing between 10 and 40 cents a pound was to be rated at 40 cents.

The bill was taken up for consideration on the 17th of January, and debated until the 10th of February, when it was passed by the House of Representatives. The discussion was necessarily largely a repetition of what had been

said many times in Congress, so far as it dealt with the general subject of protection ; and, so far as it was a consideration of the particular claims of the wool and woollen industries, too technical and intricate in its details to be intelligible in a condensed summary. But there were certain features of the debate that deserve notice as introducing new elements in the tariff problem. It was evident almost from the first that the question was to be complicated by the political intrigues of the day. The bill was stigmatized by Mr. Cambreleng, of New York, on the day the debate began, as a "prohibitory act for the benefit of the woollen manufacturers of New England,"¹ and a strong hint was given by this gentleman — who said in the same speech that he was always an advocate of the principles of free trade — to the Pennsylvania members to make a doubling of the duty on bar iron a condition of their support of the pending bill. Mr. Cambreleng was, as he said, a consistent opponent of protection. But he was also, at that time, engaged with Mr. Van Buren in an active campaign to unite all the elements of opposition to the President, Mr. Adams, in favor of General Jackson. It was important, then, to deal a blow at New England by refusing its manufacturers relief, and yet not to seem to reject the principle of protection by defeating the bill directly. Jackson had voted for the act of 1824, and was on record as favoring strongly a "judicious" tariff for protection. Mr. Cambreleng would therefore accomplish two objects which he desired greatly to effect if he could range protectionist Pennsylvania in opposition to the bill ; he would not only prevent an increase of the tariff, thus serving his constituents in commercial New York City, but he would array Pennsylvania against New England politically, and further the prospects of General Jackson.

Mr. Cambreleng found in Mr. James Buchanan an efficient coadjutor in his task of breaking down the move-

¹ "Congressional Debates," vol. iii. (Nineteenth Congress), p. 745.

ment for protection and of defeating the woollens bill. Mr. Buchanan adopted a method much better adapted to accomplish these purposes than the suggestion of double duties on bar iron. He worked himself into a well-simulated excitement over the wrong to be done to the hemp interest by giving relief exclusively to woollens. There was great danger that through the influence of Mr. Clay, then Secretary of State, the vote of Kentucky would be given for the reelection of Mr. Adams. The political advantage to be gained by posing the friends of General Jackson as advocates of assistance to the hemp-growers of Kentucky, and compelling the New Englanders either to array themselves against Mr. Buchanan's scheme or to complicate with other matters the one object they had in view, made the manœuvre of the opposition one of great shrewdness. It accomplished its object; for ultimately a large contingent of the Pennsylvania delegation and almost all the Kentucky members voted against the bill. The protestations by Mr. Buchanan himself, and by many other members who joined with him in mischief-making, that they were warmly in favor of protection, would be most edifying if it were not so plainly evident that they were bending all their energies to the defeat of the only measure of protection which the circumstances of the time rendered important.

The bill, having been passed by the House of Representatives,¹ was sent to the Senate, where it was quickly wrecked. There remained only three weeks of the "short" session when the bill was received. There was a short debate on the question of reference. The friends of the measure, advocating reference to the Committee on Manufactures, carried their point by four majority against the opponents, who tried to put the bill before the Committee on Finance. The bill was reported back in two days, whereupon its opponents delayed consideration of

¹ The vote on passing it was yeas 106, nays 95.

the matter on its merits by repeated motions to refer and recommit, with the result that no debate whatever took place upon the bill itself. Time having been frittered away until it was obviously too late to secure the enactment of the bill, Mr. Hayne, of South Carolina, moved that it be laid on the table. The motion was carried by the casting vote of the Vice-President, Mr. Calhoun. It was known at the time, and is a part of the history of the great political intrigue then in progress, that the situation was cunningly devised by Mr. Van Buren to throw upon Mr. Calhoun whatever odium would be incurred by the defeat of the woollens bill. Van Buren's course on the tariff from first to last was one of insincerity, evasion, and chicanery. Up to this time he had usually declared himself in favor of manufactures and protection, but was apt to vote contrary to the opinions expressed in his speeches. On the preliminary votes in the Senate on questions of reference of the woollens bill, he acted with the friends of the bill. He was present when the vote was taken upon the motion to lay the bill on the table, and in fact had made the motion next previous. But he now remained silent, caused the vote to be a tie, and compelled the Vice-President to give the casting vote. Had he voted, he could have averted the ignominious defeat of the bill, although there is no reason to think that the measure could have been carried through to enactment in the three remaining days of the session. His passion for politics of a petty sort led him to sacrifice his convictions in order to force upon Calhoun a responsibility which he evaded. It cannot be pleaded in his favor that he was then, as he afterward was, opposed to protection. That view of the matter is expressly contradicted by his attitude after Congress adjourned, as shown in an incident to which none of Van Buren's biographers refers.¹ It may be said here in

¹ Mr. Van Buren attended the meeting at Albany, on July 10, 1827, to choose delegates to a State convention for the selection of members of the

order to avoid recurrence to the subject, that Van Buren procured the passage of a resolution by the New York legislature instructing him to vote for the tariff bill of 1828, and thus relieved himself of responsibility for his vote; and that in his "Origin of Political Parties" there is to be found much denunciation of the protective system, but not a word to indicate that he himself had ever favored it.

The course pursued by Mr. Buchanan and Mr. Van Buren in order to promote the presidential prospects of General Jackson was only a little more conspicuously insincere than that of some other members of the Senate and House who were not quite so prominent in the interesting game of politics in which they were engaged. Mr. Benton, another of the band of president-makers, made a motion in the Senate to recommit the bill with instructions to report a provision prohibiting altogether the importation of foreign wool after January 1, 1828.¹ The motion was intended to render the bill obnoxious; but Mr. Benton,

Harrisburg convention. On that occasion he made a speech of about an hour's length. According to the "Argus" (quoted by Niles, vol. xxxii. p. 349), Mr. Van Buren "alluded to and fully explained his course in relation to the woollens bill; the character and effect of that bill, as well as of various measures adopted and discussed from time to time for the protection of our home industry; the magnitude and vital importance of the subject in reference to every section of the Union, and every part and every citizen of the State; the obvious necessity of extending to the wool grower and manufacturer and to every branch of domestic production and industry that may require it ample and liberal encouragement; and to render such encouragement effectual by the adoption of sound, careful, and wise measures, salutary in themselves and disconnected from the feverish attempts of designing partisans and the artful contrivances of those who seek to pervert a great national question to their own personal and political advantage. It was a full and very able view of the whole ground; and, intricate and difficult as the various bearings of the question are, they were stated in a manner so clear and perspicuous as to bring them within the comprehension of every hearer." It seems to be a great loss to political economy as well as to political history that this luminous speech was not reported.

¹ "Debates of Congress," vol. iii. p. 388.

both before that time and afterward,¹ as well as on this occasion, used language and employed arguments which, were the occasion to arise, might be quoted as proving him to be a strong advocate of protection. If it should be important to show that he had always been on the other side of the question, it would be easy for him to assert that his purpose was—as there seems to be no doubt it was, in 1827—to make the provisions of the bill so extreme that it could not be passed.

Although the question of the tariff was used by a group of political intriguers at Washington as a club to beat Adams and as a means of electing Jackson, the defeat of the bill was instantly followed by the beginning of a powerful agitation on the one hand to promote, and on the other to frustrate, the scheme of a revision in the interest of the woollen manufacture. As early as the first week in April, the Charleston Chamber of Commerce passed a vote of thanks to the South Carolina senators for their exertions in the interests of the State, and Mr. Hayne, in responding, warned the Charleston merchants that a measure similar to the woollens bill would undoubtedly be presented and urged at the next session of Congress, and, “without being an alarmist,” he was “constrained” to tell them that “nothing but the firm and unanimous, though temperate, remonstrance of the whole of the Southern States, aided by the firmness and good sense of liberal-minded men in other portions of the Union, can save us from a commercial calamity compared with which war itself would almost lose its terrors,”²—alarming words, surely, if not those of an alarmist. Mr. Hamilton, a member of the House of Representatives from South Carolina, at a meeting held in May³ expressed similar views in more violent language. He thought it would be a curious and melancholy fact “if, after all the blood and treasure

¹ In 1828, when he argued earnestly for a protective duty on indigo.

² Niles, vol. xxxii. p. 266.

³ *Ibid.* p. 266.

expended to escape even the apprehension of the taxation of old England, the fabric of this Union should be dissolved by imposts contrived to glut the avarice of New England."

Preparations for the coming struggle were made speedily on both sides. Many meetings were held, chiefly in the South, to protest against an increase of duties, in South Carolina more than in any other State. The memorials adopted are to be found in the fifth "Finance" volume of the American State Papers. Those which are dated show that the most of the meetings were held in June, July, and August, 1827. The resolutions and arguments presented vary greatly in form, but in substance they are much alike. The sentiments expressed cannot be exhibited more clearly and tersely than in the following extract from the memorial of the citizens of Richland District, South Carolina : —

The duties laid by Congress, of whatever description, are levied in great part on articles purchased by Southern industry and consumed by the South ; but these duties are expended almost exclusively for the benefit of other sections of the Union. All the taxes that support the expenditures of the army, of the navy, of the various fortifications, of roads and canals, in whatever proportion we pay them, return to us no more. All that is taken from us is disposed of elsewhere. We are benefited in the South by those expenditures in no way that we can perceive and feel. All that we pay is accumulated in defending and improving distant sections of the Union, and the prosperity of the North is built upon the impoverishment of the South. Although we have long submitted without complaint, the inequality and injustice of this state of things is becoming too glaring to remain unnoticed, and the burdens it imposes on us too heavy to be borne in silence any longer.¹

The grievance of the South was set forth in much greater detail on many occasions, but it is believed that it is fairly

¹ American State Papers, "Finance," vol. v. p. 707.

and fully expressed in the above extract. Its basis was the propositions that the imports of the country were paid for with the exports — and that they should be so paid for was, by the way, good protectionist doctrine; that the chief exports of the United States were Southern productions,¹ and therefore it was Southern industry which provided the means for the largest part of the merchandise imported from abroad; that the tariff, by adding to the cost of foreign merchandise, diminished the amount which could be purchased, and thus became a tax almost exclusively upon Southern industry; that the enforced diminution of imports placed a limitation upon the amount of cotton which foreign countries could purchase and thus hampered the export trade; and that the taxes collected from the South were levied for the purpose of promoting Northern industry, and the proceeds were expended in making internal improvements in the North. It is quite unnecessary to discuss these propositions. Those which are essential to prove that the tariff was more burdensome upon the South than upon the North are palpably fallacious. It was true that the protective features of the tariff were wholly for the benefit of the North; but that was only because the South preferred, by devoting itself exclusively to agriculture, to seek none of the benefits which were open to all; perhaps because it saw itself unable to obtain those benefits by reason of the fact that slave labor was not adaptable to manufactures.

South Carolina, as usual in that period of the national history, was more uncompromising than any other part of the country. The State legislature took up the subject of the tariff and adopted a report which well shows the spirit which was beginning to take possession of its people. The

¹ The total value of exports in the year ended September 30, 1827, was \$58,921,691, of which \$29,359,545 represented raw cotton; \$6,577,123, tobacco; and \$2,343,908, rice; being \$38,280,576 for these three Southern products — almost two thirds of the whole.

matter was treated as one between the governments of the United States and of the State. South Carolina claimed the right to decide that Congress had transcended its powers. She had not yet determined in what way she should put her decision into effect. But of one thing her legislature was sure. "It is all important," so reads the report adopted by the legislature, "that whatever is to be done by South Carolina ought to be so done as to impress upon the minds of the Congress of the United States that she does not at this conjuncture approach the national legislature as a suppliant or as a memorialist, but as a sovereign and an equal. . . . She must cause her sentiments to be conveyed to Congress in a manner so imposing as to evince that she could have the intercourse regulated as is proper between one sovereign and another." If the tone was more lofty than the modern view of the Constitution justifies, there can be no doubt of the earnestness and sincerity of the belief then almost universal in the South, that the tariff was peculiarly oppressive to that part of the country.

Altogether the most notable production in opposition to the movement for higher protection was the famous pamphlet written by Henry Lee of Boston.¹ It was drafted as the expression of the sentiments of an exceedingly influential group of Boston merchants and professional men. Its length — it forms a pamphlet of 196 pages — and the comprehensive and thorough character of its treatment of the subject forbid an attempt to summarize it. Although Mr. Niles found fault with it for a lack of candor in certain passages and for what he regarded as misrepresentation of some facts regarding the situation in the woollen trade, these criticisms cannot justly be applied to the argument as a whole. So far as it challenges the duty of the government to protect manufactures; so far

¹ "Report of a Committee of the Citizens of Boston and Vicinity opposed to a further Increase of Duties on Importations." Boston, 1827.

as it denies the obligation resting upon Congress to continue a policy of protection and increase duties until they become adequate to that end ; so far as it disputes the proposition that protective duties result in lowering prices ; so far as it seeks to show the inconsistency of Mr. Webster, Mr. Everett, and other New England men who had opposed and now favored protection ; so far as it attempts to prove that the causes of the existing depression in the woollen manufacture were not those alleged by the advocates of the woollens bill of 1827 and would not be cured by that or a similar measure ; — so far, in short, as it was an argument against protection on the well-recognized lines of the classical political economy, no more powerful document was ever produced in this country.

Meanwhile there was preparation not less determined on the part of the protectionists for the struggle that was to begin when the Twentieth Congress should assemble. At a meeting of the Pennsylvania Society for the Promotion of Manufactures and the Mechanic Arts, held at Philadelphia on May 14, 1827, it was resolved to call a convention of delegates of farmers, manufacturers, and the friends of both branches of industry, to meet at Harrisburg on the 30th day of July, "to take into consideration the present state of the wool-growing and wool-manufacturing interests and such other manufactures as may require encouragement." The proposition was taken up with great enthusiasm, and in all the States of the North, except Indiana and Illinois, county and State conventions were held for the appointment of delegates to the Harrisburg convention. The Maine delegates did not attend, but Virginia, Delaware, Maryland, and Kentucky were represented. The convention was attended by a hundred delegates from thirteen States of the twenty-four then in the Union. Among the members were many distinguished men, — two senators of the United States ; Mr. Mallary, the chairman of the Committee on Manufactures of the

House of Representatives, and several other members of Congress; Hezekiah Niles and Mathew Carey; Thomas Ewing, of Ohio; Ezekiel Webster, the brother of Daniel, of New Hampshire; Abbott Lawrence, of Massachusetts; Charles J. Ingersoll and Walter Forward, of Pennsylvania; and many others.

On the first day of the convention a committee was appointed to take into consideration the resolution which led to the meeting, and on the following morning the committee reported a series of seven resolutions, all of which were adopted. Under these votes six committees of nine members each were appointed: (1) to prepare a memorial to Congress upon the condition of the wool-growing and wool-manufacturing interests, and upon the proper remedy; (2) to prepare an address to the people of the United States upon the facts and causes "which have brought upon the farming interest and upon some of the manufacturing interests the present embarrassments," and to suggest the remedy; (3) upon the expediency of further protection to the manufacture of iron; (4) hemp and flax; (5) glass; (6) printed cotton. When the last four named committees reported, the convention referred their reports to the committee appointed to draft a memorial to Congress. Ultimately several resolutions were offered, the first and most important of which asked for an increase of duty upon wool, and for specific duties and the establishment of minima upon woollen goods. A duty of one cent a pound on hammered bar iron, further protection to hemp and flax, the discouragement of the importation of foreign distilled spirits and the distillation of spirits from imported materials, and a readjustment of the cotton duties so as to protect printed cotton goods, were proposed in the other resolutions, which were all adopted by the convention. The committee on glass reported that further protection of that industry was not needed. The convention showed its confidence in the committee to prepare an

address to the people, of which Mr. Niles was the chairman, by granting it permission to take all the time necessary for its preparation, and to publish it as the address of the convention. The unanimity of the convention is indicated by the fact that the memorial to Congress was signed by every member save the two United States senators, who refrained from motives of propriety. The session lasted five days.

The proposition regarding wool and woollens adopted by the Harrisburg convention became historic. It was asked that a duty of 20 cents a pound be levied on all wool costing 8 cents a pound, the duty to be increased annually by $2\frac{1}{2}$ cents until it should reach 50 cents. On woollen goods, with certain exceptions, a 40 per cent. duty was asked for, to be increased after one year to 45, and in two years to 50 per cent. Four "minimum" points were suggested. All goods costing not more than 50 cents a square yard were to be taken at 50 cents; the second minimum was fixed at \$2.50; the third at \$4; the fourth at \$6. It was frankly intended to put the duty on wool at a prohibitory point; and the purpose to exclude many classes of woollen goods altogether by the "minimum" device was also openly avowed. It was from the beginning designed to make the wool and woollen industries most prominent, and this purpose was carried out. It is not true, as some writers assert, that the original plan was to limit consideration to these two industries.¹

¹ Sumner, in his "Andrew Jackson," p. 201, says: "May 14, 1827, the Pennsylvania Society for the Promotion of Manufactures and the Mechanic Arts called a convention of wool growers and manufacturers. The convention met at Harrisburg, July 30, 1827. It was found necessary to enlarge the scope of the convention in order to make allies of interests which would otherwise become hostile. The result was that iron, steel, glass, wool, woollens, hemp and flax were recommended for protection." The foregoing account will show the inaccuracies in Professor Sumner's account. The original call was to "farmers, manufacturers, and the friends of both branches of industry." The objects of the convention mentioned included "such other manufactures as may require encouragement." The

The resolutions calling the convention were broad and general, and the result was an assembly the membership of which — on the authority of Mr. Niles ¹ — contained a majority of farmers. Some of the delegates — a few only, so far as can be ascertained — were manufacturers. It is doubtful if any similar convention ever held so small a proportion of members who could be charged with a selfish interest in the measures they urged upon Congress. The "National Intelligencer" ² said that "the convention was one of the most respectable bodies of men ever collected together in this country, and its deliberations were characterized by great ability." It congratulated, sarcastically, those who had stigmatized it in advance as a party movement, upon the fact that in its proceedings, debates, and the personal intercourse of the members it was "free from the tinge of party." ³

scope of the convention was not enlarged. And, as has just been said, the suggestion of further protection to glass was rejected as unnecessary.

¹ Vol. xxxii. p. 385.

² August 6, 1827. In this and the following citations from the "Intelligencer," it is well to bear in mind that it was strongly in favor of the reëlection of Mr. Adams, and unalterably opposed to General Jackson. In former years it had been hostile to the protective policy and had had many a controversy with Mr. Niles upon the question. It had not, in 1827, changed its attitude on protection completely; but whether it was political association or a change of conviction induced by observation and experience, it had come to look with much toleration upon the principle of protection, and even to favor an increase of duties upon wool and woollens. In an article upon the annual report of Secretary Rush, in December of the same year, the "Intelligencer" deprecated the exuberance of the Secretary's advocacy of a great extension of the system of protection, and maintained that, with the exception of wool and woollens, the existing tariff was sufficient and should be maintained.

³ An attempt was made during the debates in Congress to create the impression that the convention was political in its aims. Mr. Rowan, a senator from Kentucky, declared that "the sole object of the convention was not manufactures," and he asked, as though the answer to his question must prove his assertion, "How many Jackson men were in that convention?" Niles (vol. xxxiv. p. 187) takes up this question and disproves wholly Mr. Rowan's insinuated criticism by saying that "the president [of the convention], one vice-president and many of the members were friendly

The importance and the weight of the Harrisburg convention intensified the violence of the opposition to its recommendations. In the South, the movement was condemned on the grounds already mentioned. In the North, an attempt was made to discredit it by likening it to the Hartford convention. The only feature which was common to the two was the word "convention." The much-maligned Hartford convention was composed of delegates chosen under State authority, to secure concerted action of a small group of States, in opposition to the policy of a national administration carrying on a war. The Harrisburg convention was summoned by a voluntary society, was open to delegates from every State, and had for its sole object a petition to Congress in constitutional form. The virulence and vituperation that characterized the political discussions pending the election of 1828 can hardly be imagined by those who have not read the newspapers of that time. No doubt many people who did not trouble themselves to look at the reports of the proceedings of the convention accepted the statements of their favorite journals, which represented the convention as little better than a treasonable assembly.

The Twentieth Congress met in December. There was a contest over the speakership; Mr. Taylor, of New York, the Speaker of the Nineteenth Congress, was defeated by Mr. Andrew Stevenson, of Virginia. It was a triumph of the Jackson over the Adams faction. Gossip said that Stevenson won some votes for his narrow majority of ten by promising to constitute the Committee on Manufactures favorable to protection. Whether this be true or false, he did constitute a committee hostile, at all events, to the plan of the Harrisburg convention. Mr. Mallary, to be sure, was placed at the head of it, but on all important

to the election of General Jackson to the presidency of the United States, and so remain to be." The plan of using the tariff bill as a campaign measure was an invention of General Jackson's friends, not of his opponents.

test votes five members of the seven acted with the opposition to the protective policy, supporting every proposition to carry protection to an extreme with regard to articles which the advocates of the system did not regard as needing a change in the tariff, opposing every suggestion which those advocates deemed necessary to remedy defects in the tariff as it existed.

From the beginning the protectionists saw that they were in the hands of the enemy. On the last day of the year the Committee on Manufactures brought in a resolution vesting it with the power to send for persons and papers. The friends of the tariff saw in the movement a double purpose, to delay action on the question, and to procure for use in the debate such material as would be useful in opposition to the tariff, but none that could be employed to support it. With a few exceptions they voted against the resolution, which was carried by the combined strength of the Northern and Southern opponents of the tariff. The vote on the resolution was, yeas 102, nays 88. The members from the twelve Southern States voted as follows: yeas 63, nays 14,—a division which shows clearly the hostile character of the resolution. The protectionists were not disappointed in the investigation conducted by the committee. The persons summoned were selected carefully with a view to indicating that manufacturers were not united in support of the plan of the Harrisburg convention. The questions put to witnesses were drawn up in advance of the taking of testimony, and the same questions were put to all. By this device the manufacturers were precluded from giving any information outside of the scope of the questions.

The committee kept its promise to the House to report a bill before the first of February. The new tariff bill was brought in on the last day of January. It was accompanied by a long report written by Silas Wright, explaining the action of the committee, the general princi-

ples upon which it proceeded, and the particular reasons for each proposed change in the tariff.

Nothing could be more difficult for the student of the remarkable legislative events of the year 1828 than to free "the bill of abominations" from all the mystery which surrounds it. We have to deal with a variety of contradictory facts which can be explained upon no other theory than the complete insincerity of a great group of public men, those, in fact, who came into power in the presidential election of that year and long continued to exercise control over the public affairs of the country. We find a committee of the House of Representatives, a majority of which was opposed to the principle of protection, reporting a tariff bill which followed in general and in most of the details the plan recommended by the Harrisburg convention, and supporting that bill upon grounds of the purest protectionism. Its report contains not a word hostile to the protective policy; on the other hand, it bases every proposition to change the tariff on the importance to the country of encouraging the industries to be affected by those changes, and on the depressed condition of manufactures.¹ The most thoroughgoing advocate of the "American system" could not have argued his case with less reference to the question of revenue than did this committee. At this point the only indication of insincerity

¹ Following are some extracts from the report, which show how fully the principle of protection was accepted: "The committee will not disguise the fact that it has been their intention, in the bill they should report, to extend every protection which the nature of the case will admit to the grower of American wool. If they have not done this, they have erred in judgment and have not accomplished their own intentions." "The committee have not gone to the extent proposed by many of the memorials in the regulation of these duties [on woollen manufactures], but they have gone to the extent to which, from the evidence taken by them, they believe the prosperity of our woollen manufactures requires." "One of the witnesses proves that the denominations of window glass exceeding ten by fifteen inches is not sufficiently protected, and the committee have proposed an alteration in the present duties upon these sizes of window glass."

was the fact that the committee refused to propose the relief asked for by the one industry which most needed it. Iron, hemp, flax, molasses, spirits, printed cottons, — and wool, were granted adequate, perhaps more than ample, protection. The plan of the Harrisburg convention, with respect to woollen goods, was rejected. The demand of the protectionists was denied at the most essential point, and the protectionist members of the committee were driven into an attitude of protest against a bill which was ostensibly what they had asked for, and was supported in the report by arguments familiar in their own mouths. This anomalous condition of affairs continued throughout the debates in both branches of Congress. The free traders and the politicians who were posing as protectionists in order either to defeat protection or to make it as obnoxious as possible advocated and endeavored to retain in the bill high duties for which the real protectionists cared nothing, and to prevent the adoption of any amendment to give them that which they desired much.

There was method in their tactics. They professed to be great friends of the farmers, with their unlimited protection to wool; and yet they were aware that the total exclusion of foreign wool when the domestic clip was insufficient to supply manufacturers would close up the factories and destroy the domestic market for the home product. Thus they could bid for the farmers' votes at the coming election by holding out false hopes to the wool growers, deal a blow at the New England manufacturers, and prepare the way for an early overthrow of the whole protective system. The favor shown to hemp, flax, and iron was, in a different way, to be not without its influence upon the votes of Kentucky and rural Pennsylvania.

Enough has been said to suggest the only key that will unlock the mystery of the tariff of 1828. The explanation proposed, that of a total want of frankness on the part of those who reported and advocated the bill, has

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been virtually accepted by all writers upon the subject. Free traders have been as emphatic as protectionists in condemning the course pursued by these politicians, who fancied themselves cunning, but who overreached themselves.

Although it is as impossible as it would be fruitless to summarize the long and technical debates upon the woollen tariff, the point at issue between the two parties may be briefly set forth. The Harrisburg convention proposed four "minimum" points, at 50 cents, \$2.50, \$4, and \$6. The Committee on Manufactures likewise fixed four minimum points, 50 cents, \$1, \$2.50, and \$4. The convention asked for a progressive rate of duty, — forty per cent. for one year, forty-five per cent. for the next year, and thereafter fifty per cent. The committee proposed specific duties, — sixteen cents on the first class, making the minimum ad valorem rate on all goods costing less than fifty cents a square yard thirty-two per cent.; forty cents on the second class, making a minimum ad valorem rate of forty per cent.; one dollar on the third class, also forty per cent.; an ad valorem duty of forty per cent. on the fourth class; and forty-five per cent. on all goods costing more than four dollars a yard. The objections of the protectionists were, first, to the establishment of a minimum point at one dollar, and, secondly, to the refusal of an increasing rate of duty. The Harrisburg rate of forty per cent., that is, of one dollar a square yard, on all goods costing between fifty cents and two dollars and a half, would exclude several large classes of woollen goods which the manufacturers declared themselves able to make, and, with an assured market, to sell after a little time as cheaply as the foreign article could be afforded. The rate proposed was, and was intended to be, prohibitory. The manufacturers and their friends desired nothing short of prohibition, and that the Committee on Manufactures denied them.

The bill found no friends outside of Congress. It was warmly opposed by free traders; it was rejected as a mockery by protectionists. It would be a waste of space to quote from the journals of the time, and it is quite sufficient to say that not a word of approval of the measure has been found in any newspaper of the time.¹

The debate was such as one might anticipate from the anomalous condition which gave rise to it. Mr. Mallary moved to amend by substituting the Harrisburg convention plan for that of the committee, and on this motion a wearisome and mutually exasperating discussion took place. Mr. Bates, of Massachusetts, for example, exposed mercilessly the hollowness of the bill as a measure of protection and its essentially political character. "Without calling in question the motives of the committee, I say that if this bill had been formed for the express purpose of defeating the object in view; if the committee had called a council and taken advice how to frame a bill that could not pass this House, or, if it could, that should afford no relief to the manufacturer or wool grower, they could not have framed one better fitted for the purpose than this bill is. Without adverting particularly to the other anomalous features of it, I cannot but remark that while to every other interest embraced by the bill the committee have given in crowning measure all that was asked and more than was asked, and where none was asked, they have meted out in stinted, illiberal proportion to the interests in question, deeply depressed and suffering and imploring as they

¹ Possibly some newspapers did express approval, but they have not come under notice. Mr. Stanberry, of Ohio, a member of the Committee on Manufactures, appends a note to an extremely irritating speech, to the effect that the bill at first met with approbation on the part of administration papers in Ohio and Kentucky. "But a mandate was issued from the cabinet and in a moment all was changed" ("Congressional Debates," vol. iv. part ii. p. 2122). It is safe to say that the bill was at no time approved by "administration" or other newspapers in any State where wool manufacture was carried on.

are.”¹ He referred to the speech of Mr. Stephenson, of Pennsylvania, one of the majority of the committee, and to his assertion that the operation of the iron clauses of the bill would transfer to Pennsylvania all the rolling-mills and slitting-mills of New England. “But I ask the gentleman whether his object was to induce us to vote against the duty on iron? Whether he is desirous of being enabled to say to his constituents that the measure failed by our vote?” In other words, he saw in Mr. Stephenson’s speech a trap to catch New England members — to show that the friends of Mr. Adams were in favor of protection to New England industries only, and thus to win votes for Jackson.

Mr. Bates paid his respects to the committee. How competent were the members to decide what protection ought to be given to woollens? Mr. Martin, of South Carolina, was opposed to the system of protection; Mr. Moore, of Kentucky, knew about hemp; Mr. Stephenson, of Pennsylvania, was better acquainted with iron and chemicals than with wool and woollens; Mr. Stanberry, of Ohio, pretended to no knowledge of the subject; Mr. Wright, of New York, had confessed that when he came to the committee he was a stranger to the matter; and the other two members, Mr. Mallary and Mr. Condict, were opposed to the bill. Being ignorant, how did they proceed to acquire information? “With intelligent, practical farmers and manufacturers before them, day by day, for weeks, the question was not once proposed as to what increase or variation of duty is required either upon wool or woollens. While the questions are pushed home with more than the usual severity of a cross-examination upon the wool growers and manufacturers upon every other subject connected with the bill, — even into the sanctuary of their private fortunes and private affairs, — yet upon the prominent point, the extent of duty, not one word is said;

¹ “Congressional Debates,” vol. iv. part ii. p. 1999.

as if the committee, anticipating what their answer would be, purposely avoided furnishing evidence against the bill they had resolved to report."

Those who spoke on the other side, ostensibly in favor of the bill, were quite as sharp in their tone as were Mr. Bates and the other speakers against the plan of the committee. Mr. Buchanan, who always posed as a protectionist and always voted against the protection of products in which Pennsylvania was not interested, was as acrid as his powers of speech permitted him to be. He inveighed against the "grasping spirit" of New England, and endeavored to make it appear that there was antagonism between the farmers and the manufacturers. Mr. Stanberry illustrated the tone of the majority of the committee in one or two passages which may be quoted side by side with those already given from the speech of Mr. Bates:—

"I had heard," he said,¹ "that this great interest [the woollen manufacture] of the Eastern States was in a suffering condition, and I came here prepared to give it additional protection if I could be convinced that it needed it. But, sir, when I saw that the President of the United States, whose duty it was to recommend such measures as would promote the prosperity of the country, was altogether silent on the subject, I began to doubt whether this interest was really in the condition in which it had been represented." This was an ingenious slap at President Adams, who had not during his administration mentioned the tariff, in a message to Congress. But Mr. Stanberry said that the testimony of the manufacturers had convinced him that they needed more protection, and, when he gave his assent to the bill, believed that it granted adequate protection. "Notwithstanding all I have since heard I remain still of this opinion; and I even suspect, I am so uncharitable as to suspect, that all the clamor which we have heard against the bill has proceeded more

¹ "Congressional Debates," vol. iv. part ii. p. 2122.

from the closet of the politician than from the workshop of the manufacturer." Both in this speech and in another which he made a few days later, the real topics discussed under the veil of debate upon the tariff were the shortcomings of the President and of his Secretary of State, and the disadvantage to the West of an alliance with the East. The East was to gain everything by it and the West had everything to lose. "We have a Western man [Clay] in the cabinet aspiring to a still higher office; but his ambition can only be gratified by bribing the East and by deluding the West. If by means of his influence over Western men — and surely, sir, no man ever before possessed such an unlimited control over the minds and actions of his friends — he can secure to Eastern manufacturers an absolute monopoly, and at the same time exempt the people of the East from any burdens for the benefit of our agriculture, he may continue to receive promises of support from the moneyed aristocracy of the East."

No attempt will be made to summarize the debate or to follow in detail the progress of the bill through the House. Whatever was said that was worth saying had been said before, or was too technical to be given briefly. That which was said insincerely or with a view to its political effect has been sufficiently illustrated. An exception might be made — because the matter has been the subject of some controversy — with respect to one point discussed on its merits. The prevailing depression of the woollen manufacture was admitted on all hands. Among the causes assigned by the protectionists was the action of the British Parliament in reducing the duty on wool. Although the facts and their bearing were debated in Congress, it happens that both sides of the controversy are presented better than in the congressional debates; and consequently the narrative will be interrupted to explain the point at issue.

At the meeting in Boston to consider the propriety of

appointing delegates to the Harrisburg convention, Edward Everett, then a member of Congress, gave the following account of the British reduction of the wool duty:¹—

The object of the tariff law of 1824 was to enable the American manufacturer of woollens to enter into competition with the British manufacturer. Consequently the duty was calculated on the then existing state of the manufacture in that country. At that time the duty on all wool imported into England was sixpence sterling per pound. In the course of the year 1824, and by a law to take effect at the end of that year, this duty was reduced to one penny a pound on all wool imported into England. The object of this reduction, as stated by its advocate in the British Parliament, is worthy the attention of this meeting. In the debate on the subject Mr. Robertson, a respectable commercial member, "begged leave to call the attention of the House to the state of America, in order to show the expediency of taking off the duty on the raw materials. The population of the United States, before they were declared independent, amounted to two and a half millions; at the present day it amounts to ten millions. The population of South America might be taken, at a low estimate, at seventeen millions, and if they went on increasing in the same ratio as the United States they might be expected to amount to sixty millions in forty years." And now, sir, for the inference from the statistical survey of North and South America: "Here was an immense mart for our low-priced cloths, of which this country might avail itself if the impolitic duties on the raw materials were repealed." Such were the reasons, sir, for reducing the duty from sixpence sterling per pound to one penny.

The fact, which was a matter of record, that the importation of woollen goods into the country was large in 1825 and 1826 was alleged as a result of the change of British policy; and the depression of the domestic manufacture was attributed to the excess of foreign goods.

¹ Quoted in an addendum to the address of the Harrisburg convention. Niles's "Register," vol. xxxiii. p. 111.

The opponents of the tariff challenged all these statements. They denied that the reduction of the British wool duty had any reference to the American market, or any influence upon it. Mr. Lee's report¹ puts the matter thus :² —

The argument founded on this statement [Mr. Everett's, which is quoted fairly, and more fully than in this place] has been urged with much ingenuity and force, not only at the late woollens meeting in this city [Boston], but for twelve months before, in various other meetings, and in memorials, essays, speeches, etc., and with an earnestness which evinced the strong reliance the manufacturers placed upon it. They have not indeed been mistaken in their estimate of its effect, for nothing, we believe, has made so deep an impression in their favor. . . . It appears manifest . . . that our opponents would have us believe that the British government, on hearing of the passage of the tariff of 1824, had, from a spirit of hostility towards our manufactures, made sudden alterations in their system of duties, to enable their manufacturers still to undersell ours, and thus to countervail the benefit of the increased duty granted by our government in 1824. . . . The real truth with respect to the duty of sixpence a pound on British³ wool, as stated by Mr. Robinson, Chancellor of the Exchequer, is, "that it did not exist till 1819, for up to that time it had been only one penny the pound, and it was imposed not as a duty of protection but of revenue." . . . Petitions for its repeal were sent in as early as 1820, and attempts were then made, and repeated from year to year, to reduce it to its former rate, but were resisted until 1824, when, the necessities of the nation no longer rendering it indispensable, it was, with the duties on some other articles, reduced. . . . It was no doubt a relief to the manufacturers and still more to the consumers, but it was done without any particular reference to our tariff, and the measure would undoubtedly have been adopted had no change taken place in our duties. In the various debates from time to time on the subject of

¹ See page 263.

² Page 46.

³ Evidently a slip of the pen. Foreign wool is intended.

this tax and that of the manufacture of woollens, the importance of supplying the United States with coarse woollens is dwelt upon by one speaker, but it was the competition with the continental manufacturers which all the advocates for reduction had chiefly in view, and not those of the United States. . . .

Let us now compare the date of that law [the act of 1824] with the passage of the British act reducing the duty on wool. On referring to the laws of the United States, we find the tariff act dated 22d of May, 1824, while the act reducing the duty on wool passed 180 to 20 in the House of Commons, 21st of May, 1824. How, then, can it be said that a law petitioned for in 1820, which passed 21st of May, 1824, thirty or forty days before the passage of our law was known in England, could have been enacted subsequently to, in consequence of, and with a view of defeating the provisions of a law passed in this country on the 19th and signed on the 22d of May of the same year?

Mr. Lee denied that the reduction of the British wool duty had an appreciable effect upon the prosperity of the American woollen manufacture quite as strenuously as he combated the idea that it was a counter movement by Great Britain with reference to the American tariff act. Although the passage from Mr. Lee's report, just quoted, is seemingly conclusive so far as its comparison of dates is concerned, it is to be remembered that the intention to pass a tariff law in this country was even more ancient than the petitions for the reduction of the duty on wool imported into Great Britain. An attempt in that direction in 1819-20 barely failed; and the passage of such a law was well-nigh certain when Congress met in December, 1823, months before the act of 1824 was finally passed. Mr. Lee points to the narrowness of the majority for the bill as evidence of the doubtfulness of its passage, of which the House of Commons might have taken account. But those who have followed the narrative of what occurred during the first session of the

Eighteenth Congress will recall the fact that there was no doubt at the beginning of the session, and that the perilously narrow margin at the end was the result of divisions among the protectionists, shrewdly fostered by their opponents.

Whether or not the advocates of the tariff had the better of the argument upon the motive and the consequences of the reduction of the British wool duty, it is certain that the manufacturers believed that act of the British Parliament to have been one of the chief causes of their distress, and it has always been a matter of belief on the part of protectionist writers on the tariff. To the present writer the weight of argument seems to be on the side of the opponents of the act of 1828. Three causes at least operated to the disadvantage of American woollen manufacturers after 1824, each of which was of greater effect than a reduction of the duty upon the foreign wool used by British manufacturers: the comparative inexperience and lack of skill of American manufacturers; the higher cost of labor; and the preference of consumers for a foreign to a domestic article, which continues to this day. These causes might have been alleged as reasons for increased protection with quite as much force as was the supposed unfriendly act of Great Britain. They could not have been urged with as much effect; for an accusation of unfriendliness toward America and American industry fell upon ears ever predisposed to believe the accusation true. On the other hand, manufacturers would not admit inexperience or lack of skill, and they denied that the scale of wages was a formidable obstacle to their success in competing with England. Thus they relied upon a minor and popular reason for asking protection instead of resting upon arguments which subsequent events prove conclusively to have been better and sounder.

We now return from this digression to the progress of

the bill through Congress. All amendments offered by the genuine protectionists were defeated; and the bill, which had been under consideration nearly every day for a month, was reported to the House by the Committee of the Whole on April 3, 1828. Then the whole subject was reopened, the amendments were discussed again; and the entire debate was virtually repeated. The bill was at last passed on the 22d of April, by a vote of 105 to 94. The division was a remarkable one. The South, of course, opposed the bill. Save three members from Virginia and the entire Kentucky delegation, the full vote of the States south of the Maryland line was thrown against it. The consistent free traders of the North also recorded themselves on the same side. The rest of the members divided in a singular way, which may be illustrated by stating the fact that the whole Pennsylvania delegation, except three absentees, twenty-six of thirty-four New York members, and all the Ohio members voted for the bill; and that eleven of the thirteen Massachusetts members voted in the negative. The members can be divided into five general classes, of which two, the Southerners and the radical free traders, have already been mentioned. The others were: (1) protectionists who voted for the bill in spite of its defects; (2) protectionists who voted against it because of its defects; and (3) a large contingent of members who voted for it solely for political reasons, having no strongly fixed opinions upon the tariff question.¹ The fact that there were two test votes, one upon the adoption of Mr. Mallary's amendment, and the other upon the passage of the bill, enables us to see the divisions quite clearly. The vote upon Mr. Mallary's amendment—yeas 80, nays 115—separates those who did from those who did not favor the grant of ample protec-

¹ The third class may further be divided into two sub-classes: those, like Silas Wright, who were at heart inclined to the free trade system, and the mild protectionists of the Buchanan stamp.

tion to the only industry which was in distress from the want of it. The vote upon the passage of the bill gave an accession to the affirmative of the politicians who thought its passage would help General Jackson's prospects; to the negative of the protectionists who regarded the bill as a mockery.¹

The bill, having passed the House of Representatives, was sent to the Senate, where it was made even more a political football than it had been in the lower House. It was referred to the Committee on Manufactures, by which it was reported back, with sundry amendments, on the 30th of April. The most important of the amendments were those proposed in the woollen duties. They were of the nature of a compromise between the conflicting parties. The one dollar minimum was retained, but the rate of duty was changed from specific to ad valorem, and was fixed at forty per cent. for one year, and forty-five per cent. thereafter. The Senate began the consideration of the bill on the 5th of May, and proceeded, with little debate, to dispose of the amendments proposed by the committee. The first of the amendments was intended to put a stop to a practice by which the duty on rolled iron was evaded. But the original intention of the members was to reject

¹ A statement of the vote of some of the State delegations on the two divisions will show the operation of the influences mentioned above.

State.	Mallory Amendment.		Passage of the Bill.	
	Yes.	No.	Yes.	No.
Maine	3	3	—	7
New Hampshire	5	1	5	2
Vermont	4	—	5	—
Massachusetts	13	—	2	11
New York	14	17	27	6
Pennsylvania	5	18	23	—
Ohio	12	2	13	—
Kentucky	3	9	12	—

It will be seen that the three States of New York, Pennsylvania, and Kentucky, which gave 62 of the 103 votes by which the bill was passed, yielded but 22 votes in favor of adequate protection to the woollen industry.

all amendments in order to avoid sending the bill back to the House; and accordingly the amendment was defeated. Immediately afterward, the series of amendments changing the woollen duties came on, and the advocates of protection to that industry rallied and carried all the amendments to the schedule by a uniform vote of 24 to 22. These several votes were almost exactly a division of the North from the South. Only one Northern senator voted against the amended woollen duties, — Mr. Kane, of Illinois; only two Southern members voted for them, — Mr. Boulogny, of Louisiana, and Mr. Benton, of Missouri. Two senators, one from each section, were absent.

After two or three unimportant amendments had been disposed of, the Senate came to the molasses question. The House had fixed the duty at the virtually prohibitory vote of ten cents a gallon, which it was proposed by the Committee on Manufactures to reduce to seven and a half cents. Every senator who spoke in favor of the reduction had favored the change in the woollen duties; every one who championed the higher rate had voted against relief to the woollen industry. The amendment was rejected. After all the amendments proposed by the committee had been disposed of, many others were offered from the floor. The most striking feature of this part of the proceedings was the activity of Mr. Benton in proposing or advocating protective duties on articles of Western and Southern production. In the course of a long speech in support of duties on lead and manufactures of lead, in which Illinois and Missouri were chiefly interested, he made the following carefully prepared statement of his position on the tariff: "I am for abolishing duties *in toto*, as soon as the public debt is paid off, upon all articles of prime necessity or ordinary comfort which are not made at home at all, or not made in sufficient quantity to merit national protection; and I am for continuing them on articles of taste or luxury, and upon such rival productions of foreign

countries as our security in time of war and our general independence as a nation require to be made at home."¹

Mr. Benton interpreted his own limitation of the objects to be protected quite liberally ; for, beside lead, which is certainly needed in time of war, he urged most strenuously and persistently a prohibitory duty on indigo, as an article essential to textile manufacturers, — from which the inference is fair that he regarded properly dyed cotton and woollen cloths as articles which our independence as a nation required to be made at home ; he moved a heavy duty on furs ; he proposed to increase the molasses duty to the preposterous rate of sixteen cents a gallon ; he offered an amendment prohibiting the importation of wool after a certain date ; and finally he moved to lay a duty on oranges, limes, and lemons, "to protect the products of Florida." That there was far more of politics than of sympathy with protection in the votes and speeches of Mr. Benton and other speakers requires no proof. Mr. Benton virtually admits it in his "Thirty Years' View."² Nevertheless, the course which he and others pursued was in the highest degree disingenuous ; for there is nothing in his speeches to indicate that he was not a full believer in the protective system. To be sure, he taunted those who would not vote for the "abominations" which he proposed with opposition to protection of articles in which their own States had no interest ; but the strongest advocates of the system taunted him with the same one-sidedness and in almost the same language.

There is every reason to think that the situation and the circumstances in which the tariff act of 1828 was passed are accurately set forth in the notable speech of Daniel Webster in the Senate while the bill was pending. A part of this speech is familiar because, being of the nature of a personal explanation of his own course, it is

¹ "Congressional Debates," vol. iv. part i. p. 729.

² Vol. i. chap. xxxiv.

quoted by his biographers. Other passages which have to do rather with the political history of the time are not so well known. It is noteworthy that, in explaining his purpose to vote for the bill, Webster does not as yet profess to have changed his own opinion. He had, in 1824, expressed himself strongly against the policy of protection. In 1828 he said not a word in favor of the principle. He virtually assumed to speak for New England, which, up to 1824, had opposed protection, but, upon becoming satisfied that the system had been deliberately and finally adopted as a national policy, had resolved to take advantage of it; and now insisted that, having been induced by the promise of continued encouragement to embark its capital largely in manufacturing enterprises, it was justified in expecting that the promise be fulfilled. He referred to the accusation, prior to 1824, that New England, having herself established manufactures, selfishly opposed measures that would enable other parts of the country to establish them and thus become her rivals; and to the present accusations that the pending measure was "exclusively for the benefit of New England, to be brought forward by her agency and designed to gratify the cupidity of her wealthy establishments." He pronounced both charges "equally without the slightest foundation," and had no difficulty either in proving them to be so or in explaining the reasons for the change in the policy of the New England people.

Mr. Webster then gave a clear and graphic history of the events which had led up to the existing situation in the woollen industry; and this brought him logically to a consideration of the relation of the provisions of the bill respecting that manufacture to other clauses. This is the part of the speech in which we are most interested. It may seem to be an act of partisanship to adopt as true and accurate Mr. Webster's allegations regarding the spirit and purpose of those who imparted its peculiar

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character to the bill. It would be so were it not for the facts that some of those who helped to make the bill objectionable afterward avowed that to have been their intention, and that every writer, upon both sides of the question, has perceived, stated, and condemned their course of action. In these circumstances Webster's words may be accepted as having received full corroboration.

"The wool manufacturers think," he said,¹ "they have made out a case for the interposition of Congress. They happen to live principally at the North and East; and in a bill professing to be for their relief other provisions are found which are supposed — and supported because they are supposed — to be such as will press with peculiar hardship on that quarter of the country. . . . Not only are clauses found and continued in the bill which oppress particular interests, but taxes are laid also which will be severely felt by the whole Union; and this too with the same design and for the same end before mentioned, of causing the smart of the bill to be felt." He instanced the molasses duty as of this class, "needlessly oppressive to the whole community and benefiting nobody on earth but the Treasury. And yet here it is and here it is kept under an idea, conceived in ignorance and cherished for a short-lived triumph, that New England will be deterred by this tax from protecting her extensive woollen manufactures; or if not, that the authors of this policy may at least have the pleasure, the high pleasure, of perceiving that she feels the effect of this bill. . . . Gentlemen who hold it to be wholly unconstitutional to lay any tax whatever for the purposes intended by this bill, yet cordially vote for this tax. An honorable gentleman from Maryland [Mr. Smith] calls the whole bill a 'bill of abominations.'² This tax, he agrees, is one of its abominations — yet he votes for it. . . . Both the gentlemen

¹ "Congressional Debates," vol. iv. part i. p. 751 *et seq.*

² This seems to fix the authorship of the famous phrase.

from North Carolina, have signified their dissatisfaction with the bill, yet they have both voted to double the tax on molasses. . . . And yet, sir, North Carolina, whatever she may think of it, is fully as much interested in this tax as Massachusetts. I think, indeed, she is more interested, that she will feel it more heavily and sorely. . . . And yet the gentlemen from North Carolina insist on keeping this tax in the bill. Let them not, then, complain. Let them not hereafter call it the work of others. It is their own work."

The above passages indicate clearly the view taken by the advocates of protection to woollens of the motives which actuated those who devised and adhered to the abominations. The Southern senators — it is of course needless to say — were strongly opposed to the bill and to the system it was supposed to represent. No doubt they took a radically different view of their proper course of action from that expressed by Mr. Webster. Unfortunately, few of them took part in the debate, and those who did so are meagrely reported in the "National Intelligencer." [Mr. Smith, of Maryland, spoke rather as a free trader than as a Southerner; Mr. Benton, who supported the bill, assumed to represent the West, and not the South; and Mr. Hayne, of South Carolina, who spoke briefly once or twice, contented himself with a general complaint of the ill treatment of the South.] He regarded the bill as a compromise between Pennsylvania and New England, in which each section was to obtain government aid at the expense of the Southern States. "The feelings of the South have been disregarded and her remonstrances slighted; and shall we sit coolly and see the parties who are to benefit by this system compromise with each other, while we are to be the losers under all circumstances?"¹

The debate came to an end on the 12th of May, on which day the bill was ordered to a third reading by a

¹ "Congressional Debates," vol. iv. part i. p. 746.

vote of yeas 26, nays 21. On the 13th, a motion by Mr. Hayne to postpone indefinitely was defeated by yeas 20, nays 27; and the bill was then passed, yeas 26, nays 21. On these votes one senator only was absent, — Mr. Bell, of New Hampshire. Two senators who voted against the third reading — Mr. Silsbee, of Massachusetts, and Mr. Robbins, of Rhode Island — voted also against indefinite postponement, — a course of action which seems easier of explanation than that of Mr. Bouligny, of Louisiana, who voted yea on the third reading, yea on indefinite postponement, and yea on the passage of the bill. The divisions on third reading and on the final vote were identical. Five Northern votes only, all from New England, were given against the bill; and as the senators had unanimously supported the woollen amendments, it may be inferred that they opposed the measure on its final passage because of the "abominations," which were greatly detrimental, as they thought, to the interests of their own States — that is to say, for precisely the same reason which Mr. Hayne assigned for his own opposition to the bill as a whole and in detail. Eight Southern votes were given in favor of the bill, although the four of Kentucky and Missouri might be classed as Western, and the two of Delaware almost as much Northern as Southern. The other two were those of Mr. Bouligny, and of Mr. Eaton, of Tennessee, the great friend and afterward the cabinet minister of General Jackson.

The House of Representatives concurred, after a brief debate, in all the amendments of the Senate; and the bill went to the President, by whom it was signed on the 19th of May. No importance is to be attached, in any sense, to President Adams's approval of the act, since he and all his predecessors in the presidential office regarded the veto power as a right to be exercised only in cases where the laws passed by Congress were deemed unconstitutional. General Jackson was the first President who

interpreted the Constitution as giving him the privilege of exercising his judgment as to the expediency as well as the constitutionality of bills laid before him for approval.

It has surely been made sufficiently clear in the preceding pages that the genuine protectionists cannot be held responsible for the "abominations" in the act of 1828, nor indeed for the act itself, in whole or in detail. It may be objected to the assertion in this form that since Pennsylvania and New York had previously been the home of protection, the members from those States rather than the recent converts from New England are to be regarded as the "genuine protectionists;" and that inasmuch as they imparted to the bill its character, the assertion is not true. After all, that would be merely a quibble. The conversion of the New Englanders was thorough; the attitude of the Middle States men was dictated by political motives, and most of them ceased even to pretend to favor protection before the next tariff campaign came on. If any doubt exists as to the sentiments of genuine protectionists, it is only necessary to observe how carefully and completely Mr. Niles washed his hands of the whole business. In fact, every one was ashamed of the law when it was passed. Some members voted against it with a hearty and honest detestation; some with a sigh of regret that they could not find enough good in it to counterbalance the evil. On the other side were members who gave their votes with a chuckle at having drawn their political adversaries into a trap, and a large contingent of men who hesitated between their hopes and their fears and finally gave the benefit of the doubt to the bill. The opposing sentiments were well illustrated when, the measure having passed the House of Representatives, the title came up for approval. Three members of the minority offered amendments. Mr. Wilde, of Georgia, wished to add to the title, in order to show what was intended, "and for the encouragement of manufactures." John Randolph,

✓ always plain-spoken, opposed the motion, saying that "the bill referred to manufactures of no sort or kind except the manufacture of a President of the United States." Mr. Drayton, of South Carolina, suggested the addition of the words "for the purpose of increasing the profits of certain manufacturers." Mr. Hodges, of Massachusetts, offered as an amendment "and to transfer the capital and industry of the New England States to other States in the Union." None of the amendments received the honor of a division; not one was offered seriously. But they all show how heartily the measure was disliked.

Like many another legislative act, it justified few of the hopes and few of the fears of the members who participated, on the one side or the other, in its passage. No doubt it helped General Jackson's cause. The Southern opponents found in it all the evil they apprehended. But in its operation as a protective measure it was far more effective than had been anticipated. For that very reason it was speedy in its action as a renewer of the tariff conflict.

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IX

THE CONSTITUTIONAL QUESTION

THE passage of the tariff act of 1828 was one of the most momentous events in the political history of the country. From the time of the Missouri Compromise onward, the one great issue before the people was the fate of the Southern institution of negro slavery. Not only the exciting political battle over the tariff, but the still more feverish agitation regarding Nullification that followed and resulted from it passed with only a reference now and then to the subject of slavery. When a writer or a speaker on either side mentioned slavery he seemed to assume an air of bravado, as much as to say, You may be afraid to touch upon the real question, but I am not. For, little as the fact was recognized at the time, the tariff was but the skirmishing ground where the leaders of the conflict tried and proved the weapons that were to be used in the final campaign a generation afterward.

Viewed dialectically, the tariff controversy at this time ceased to be a discussion of the wisdom — the economic expediency or in expediency — of the "American system." It became a consideration of political and constitutional problems. We have seen the process of transformation going on gradually in the years between 1816 and 1828. We have seen the "bill of abominations" framed and passed by men who did not believe in the principle upon which it was professedly based, purely as a political measure, — first, to compass the election of a candidate for President who was as disingenuous as themselves in his utterances on the protective tariff, and, secondly, to break

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down the whole system by overloading it. However insincere these advocates of the measure of 1828 may have been, the Southern opponents of the bill were terribly in earnest. The statesmen of the South were convinced that the future of that part of the country was full of disaster unless the protective system and the twin measure, internal improvements, were overthrown. Economically, they regarded the tariff as a direct transfer of wealth from the South to the North. Politically, it stood for a triumph of the North over the South and a menace to that equal division of power between the two sections which they maintained to be an unwritten clause of the "compact" on which the Union was founded. Socially, it increased the population of the North and the relative importance of free labor, and correspondingly diminished the influence of the social system of the South.

The use of public money for internal improvements was hardly less a source of anxiety to them than the enactment of protective tariffs. The South at this time was in less pressing need of roads and canals to market its products than was the North. Since, therefore, the aid of the government was extended chiefly to Northern enterprises, the effect of the policy was regarded as laying upon the South another burden of the same sort as that imposed by the tariff. This, however, was clearly not the chief reason of the Southern opposition to internal improvements. The right to encourage manufactures by means of a tariff, and the right to apply public money to the construction of roads and canals, both rested upon the doctrine of "implied powers" in the Constitution. Consequently it was logically necessary to class them together and to oppose them both as inconsistent with a strict construction. It would be highly interesting to discuss fully the relation between the two issues; to observe where the same arguments were applicable to both and where discussion diverged; to notice the reasoning by which some men who

denied the power of Congress to protect manufactures justified themselves in upholding the right to build roads in the States; and more particularly to study the remarkable access of vigor which was imparted to the free trade movement by President Jackson's veto of the Maysville Road bill. But in the special work before us a consideration of these points is not necessary, nor important, nor even appropriate, although it would be required in a general political history. That the tariff discussion was inextricably involved with the question of internal improvements; that it was intimately connected with the proposition regarding the public lands and the distribution of the surplus revenue; that upon all these questions politicians immediately appealed to their own ideas of the nature of the Union, the terms of the "compact," State sovereignty, and the right of nullification, — all this will be no hindrance to confining attention strictly to the tariff, and, moreover, the limitation will not result in false or partial views of the subject under examination.

The power to defeat a protective tariff either by academic argument against the soundness of the principle of commercial restraint, or by setting off the interest of the South against that of the North, was definitely lost in the contest of 1828. Nothing remained but to dispute the constitutional power of Congress to pass such laws. A diligent examination of all the debates upon the tariff reveals but a single suggestion prior to 1820, that a tariff for protection only was unconstitutional.¹ The suggestion was made in 1816 by a Southern member, that as the tariff would operate to discourage the exportation of cotton, it was virtually a violation of the clause of the Constitution

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¹ Mr. Clay said, in his debate with Mr. Calhoun, in the Senate, March 10, 1838: "He [Mr. Calhoun] admits the truth of what I said, that the constitutional question as to the power of the government to protect our own industry was never raised before 1820 or 1822. It was at first hinted, then controverted, and soon after expanded into nullification."

which forbids any duty upon exports. No one thought it worth while to refute this unique constitutional argument.¹ In 1818 Congress passed an act, almost without opposition, and certainly without a word of opposition on constitutional grounds, which by its title² avowed itself a measure for protection only. It is possible that in some quarter — in some newspaper or speech — the constitutional objection was raised seriously before 1820, but it has yet to be discovered. It was brought forward tentatively, suggestively, almost with an apology, in that year. An intimation that the protection of manufactures was not a power granted to Congress by the Constitution seems first to have been made publicly by Mr. Ezekiel Whitman, of Massachusetts,³ in the House of Representatives, in the discussion on the tariff bill which did not become a law. The first elaboration of the idea, so far as is known, occurs in Daniel Webster's Faneuil Hall speech on October 20, 1820, which has, like the preceding cases, been mentioned already, and will be referred to hereafter. Although the point was adopted in a remonstrance against protection that emanated from Philadelphia, in November, 1820, a similar remonstrance from Charleston in December in the same year contains no reference to the constitutional objection.

Nevertheless, the usefulness of this form of attack was quickly perceived in the South, and the members from that section made not a little use of it in 1824. It was at that time that Mr. Clay startled the opponents of protection, and possibly its advocates quite as much, by announ-

¹ The point has, it may be remarked, been disposed of by the Supreme Court of the United States, which has decided that a duty on exports must be either a duty levied on goods as a condition or by reason of their exportation, or at least a direct tax on goods which are intended for exportation. (*Brown v. Houston*, 114 United States Reports, p. 622.)

² An act to increase the duties on certain manufactured articles imported into the United States. Approved April 28, 1818.

³ District of Maine. See page 190.

ing that he relied, for the constitutional sanction of the American system, upon the clause giving Congress the power "to regulate commerce with foreign nations" rather than upon the power to levy imposts. Prior to the debate in 1824 such discussion of the constitutional question as had taken place had appealed rather to the spirit of the Constitution than to its letter. The right to encourage manufactures by means of a tariff had been so generally assumed and so generally conceded that technical and analytical study of the phraseology of the Constitution had not been made. Mr. Clay's announcement broadened the controversy greatly. It led statesmen and public writers to examine with more care than had ever before been given to it the doctrine of "implied powers." They recurred to the debates in the Convention of 1787, they ransacked the proceedings of the State conventions that ratified the Constitution, for facts and suggestions to support the interpretation which they had already adopted as the true interpretation. As usually happens in such cases, the contestants on both sides became more radical in opinion and more strenuous and excited in upholding each his own view.

Such was the situation during the campaign of 1828. In Congress, to be sure, politics held full sway. Some of the Southern members discussed the constitutionality of the tariff, but little notice was taken of their arguments. In the newspapers and in public meetings both sides of the question were presented frequently and fully. After the act had been passed the constitutional aspect of the issue became more prominent. This was, no doubt, largely due to the appearance of a letter written by Mr. Madison in which the right of Congress to encourage manufactures was argued with such force that the opponents of the principle — except those of South Carolina, who assumed the right to decide the question for themselves finally — were compelled to adopt defensive instead of offensive

tactics. In South Carolina the people divided themselves into two factions, — the State Rights and Free Trade party, and the State Rights and Union party, — both holding the same views upon the tariff, but differing as to the proper method of meeting and dealing with what they all regarded as a great evil. The tariff was denounced by the more radical party in the words of the Virginia Resolutions of 1798, as a “deliberate, palpable, and dangerous exercise of powers not granted by the compact,” for which, in the language of the Kentucky Resolutions of 1799, nullification was “the rightful remedy.” The Union party opposed stoutly the idea of nullification.

In the earlier stages of the controversy South Carolina was supported in its position, save in respect of the “rightful remedy,” by most of her neighbor States. The governors of Virginia, North Carolina, and Georgia made the tariff and internal improvements topics of warm discussion and earnest protest in messages to their legislatures. No one person gave more effective argumentative aid to the free trade cause than was rendered by Thomas Ritchie, the editor of the Richmond “Enquirer.” Some of the most popular and striking points made in the discussion have been attributed to him. Northern opinion was not greatly disturbed by the outbreak of Southern feeling until the danger of public disorder became acute. Not many of the free traders accepted the view that the tariff was unconstitutional. Inexpedient they were sure it was, but they did not venture to go against the uniform practice of all parties and all administrations. Few of the Northern newspapers, indeed, opposed protection in the abstract. Mr. Condé Raguet, who had been Mr. Adams’s Minister to Brazil, was the most conspicuous, earnest, and influential Northern journalist who did so. Mr. Raguet, in 1829, established in Philadelphia a weekly journal of the size and form of Niles’s “Register,” entitled the “Free Trade Advocate.” At the end of the year he

discontinued the "Advocate" and removed to Washington, where he issued the "Banner of the Constitution," a weekly folio newspaper of eight pages, devoted wholly to the cause of free trade. In 1831 he removed again to New York, where the "Banner" was published a few months; then he returned to Philadelphia, where his peregrinations ended, and where his paper also came to an end in 1832. Mr. Raguet never professed to be able to deal with the tariff as a constitutional question. He was the firmest of believers in the science of political economy,¹ and wrote an incredible amount of "copy" attacking the deductions of protectionists from statistics and from the commercial situation. Like the essays of Mr. Niles and of Mathew Carey, it is now dull reading; but those who have the patience to examine it will not only be convinced of Mr. Raguet's sincerity, but will discover that he was a strong and a keen writer, quick to see the weakness in an adversary's position and persuasive in presenting his own views. Although he did not venture editorially to employ the constitutional argument, the columns of his journal were always open to those who were able to use it, and the "Banner" became the leading exponent in the North of free trade doctrine and of the strictest sort of strict construction. Consistency wrought his ruin. He was logically compelled by his principles to support the most extreme demands of South Carolina, and to assume, almost alone, an attitude of opposition to the President's nullification proclamation. There was no salvation for a Northern newspaper which occupied that position. His subscribers left him, as he frankly acknowledged, and he was forced to discontinue the "Banner."

In 1831, before the culmination of nullification, two

¹ For example, — and many examples might be given quite as naïve, — "One of the most mischievous effects resulting from the American system delusion is the prejudice which is excited by it against the science of political economy" ("Banner of the Constitution," March 28, 1832; vol. iii. p. 132).

rival conventions were held, — a free trade convention in Philadelphia, and a convention of the "Friends of American Industry," in other words, a tariff convention, in New York. Neither of the conventions was representative, in a large sense, or fully national in character. We should remember that at this time the present constitution of the national party convention had not been evolved. Both the conventions of 1831 contained many members of great ability, of high standing, and of wide reputation. The delegates were appointed at voluntary local meetings in such numbers as the persons present deemed proper. The "Banner of the Constitution" printed a list of more than three hundred and fifty delegates to the free trade convention, which met on September 30, 1831; but the list of those present recorded but two hundred and five names. Fifty-one of them were from Virginia, forty-four from South Carolina, and thirty-eight from other Southern States. Seventy-two delegates were present from Northern States. Fifteen of the twenty-four States in the Union were represented.

The proceedings of the free trade convention are interesting, for present purposes, solely on account of the debate which took place on the address to the people of the United States — an exposition of the views of the members which has since been superseded by the less ingenuous party "platform." Many of the Southern delegates went to the convention resolved to secure from it an explicit declaration that a protective tariff was unconstitutional. The drafting of the address was intrusted to a committee of two from each State represented. When the committee met, it was made plain that a large number of the members of the convention would withdraw and refuse to take part further in the proceedings if an assertion of unconstitutionality were inserted in the address. Thereupon it was determined, in the spirit of compromise, to introduce a discussion of the constitutional question

with the remark that "a numerous and respectable portion of the American people do not merely complain that this system is unjust, but they question the right to establish it. They do not doubt—they utterly deny—the constitutional power of Congress to enact it." And then the address proceeded to give the reasons why "they" thought so. The address was written by John M. Berrien, of Georgia, who had been, until a few months before, Attorney-General in President Jackson's cabinet. Mr. Berrien was one of the ablest of the Southern statesmen of his time; his service in the Senate extended, with two intervals, over the long period from 1824 until 1852. The address is a strong and on the whole a moderate statement of the free trade objections to the tariff. Senator Hayne said, in a speech on January 9, 1832, that he did not know where the constitutional aspects of the question were better summed up than in this address.¹

Mr. Gallatin, one of the foremost free traders in the country and one of the most accomplished statesmen in the Democratic party, was a delegate from New York and a member of the committee on the address. He opposed not merely the assertion that the tariff was unconstitutional, but the presentation of the views of those who held that it was so; and reserved to himself the right to move to amend the address by striking out the whole passage. In making that motion in the convention he said² that "he was one of those who believed the power to be expressly granted by the Constitution." But he refused to discuss the point. He was unable to vote for the address even if the part to which especially he objected were to be

¹ Quoted in Story's Commentaries, edition of 1833, vol. ii. p. 432, *note*. It is one of the most remarkable examples of the power of political association over a man's opinions that Mr. Berrien was soon driven into the Whig party, and that as such he voted in the Senate for the protective tariff of 1842, and against the "free trade" tariff of 1846.

² The report of proceedings cited is that printed in the "Banner of the Constitution." Mr. Ragnet was secretary of the convention.

eliminated. Nevertheless, he was anxious on other grounds to stand with the convention in opposing the tariff system. Discussion would only develop differences where harmony of action was desirable.

Two other members who agreed with Mr. Gallatin's opinion on the constitutional point spoke upon the motion. Mr. Carpenter, of Maine, "believed the tariff to be constitutional; but if it is a fact that others believe it unconstitutional, why not state it?" He did not find it inconsistent to vote against Mr. Gallatin's motion and in favor of the address. Mr. Theodore Sedgwick, of Massachusetts, said that the opinion that the tariff was unconstitutional did not exist in his State. "One of the first acts of the general government was for the protection of manufactures. And shall we then go forward and tell the people that what the government has been doing ever since its foundation it has had no power to do? The people of the section of the country from which I come will not understand you." The amendment was defeated by a vote of 159 to 35.

Then came an objection to the language of the address from the opposite side of the house. "They admit," said the address, "the power of Congress to lay and collect such duties as they may deem necessary for the purposes of revenue, and within these limits so to arrange those duties as incidentally, and to that extent, to give protection to the manufacturer;" which, urged Judge Job Johnson, of South Carolina, was to give away the whole case — "fatal to the cause of free trade and fatal to the constitutional argument." An incidental power was all that the protectionists had ever claimed; "and shall we take up the threadbare arguments of our opponents?" The efforts of Mr. Berrien and another Southern member were successful in persuading Judge Johnson to withdraw a motion a decision upon which, either way, would have split the convention in twain. The address was finally adopted without amendment by a vote of 170 to 27. The minority

was composed exclusively of Northern members. A fresh committee was raised to prepare a memorial to Congress; Mr. Gallatin was placed at the head of it. It is needless to say that the full constitutional power of Congress over the tariff is not disputed in the memorial.¹

The tariff convention, held in New York on October 26, 1831, was a large body in point of numbers, but was not more strictly representative than the free trade convention. Its proceedings call for no particular mention at this time. The address, which was written chiefly by John P. Kennedy, of Baltimore, was adopted unanimously without debate, and was signed by all the five hundred and twenty-five delegates. It entered fully into the constitutional question. The arguments presented will be referred to hereafter.

It is unnecessary, and it would carry us too far from our subject, to examine the course of reasoning by which South Carolina persuaded itself that it possessed the right to nullify the tariff laws. But it is important to note, in this summary of the history of the constitutional argument, that the President, both in his proclamation and in the special message upon nullification which he addressed to Congress, virtually asserted his belief that the power granted by the Constitution to lay duties was plenary, and that no inquiry as to the motives of Congress in enacting a tariff law was either pertinent or possible. Yet he, as well as the nullifiers, was now opposed to a perpetuation of protection by high duties. The two wings of the Democratic party henceforward coöperated in an effort gradually to substitute free trade for the "American system." Events so shaped themselves during the long and briefly interrupted ascendancy of that party in the administration of national affairs that there was no occasion to renew the

¹ It was, nevertheless, denied briefly and without argument in the "Exposition of Evidence" which accompanied the memorial, prepared by Mr. Henry Lee, of Boston.

constitutional contest. When the national convention system was developed and the party platform was introduced, the Democrats pronounced boldly that the appropriation of public money for internal improvements was unconstitutional. They chose a Delphic phrase to express their opinion on the tariff. They resolved "that justice and sound policy forbid the federal government to foster one branch of industry to the detriment of another, or to cherish the interest of one portion to the injury of another, of our common country."¹ This resolution was repeated in every Democratic national platform until 1860. The sentiment was one to which every person, North and South, protectionist and free trader, could give his assent, however much men might disagree upon the question whether a protective tariff had an effect to hurt some sections of the country and some branches of industry while benefiting others.

The felicitous phrase of the Democratic platform and the success of the Democratic party in breaking down the protective system resulted, as has been said, in a long disuse of the constitutional argument. The Civil War restored the advocates of protection to power, and the effect of that great conflict was to establish permanently the ascendancy of a liberal over a strict construction of the Constitution. Nevertheless, in 1892 the old weapon was brought out of the dusty armory and furbished up again; for then, for the first and only time in the history of the country, a great political party asserted that the Constitution confers no power upon Congress to lay duties save for the purposes of revenue, thus impeaching the character and the validity of three quarters of a century of congressional legislation, and rejecting without a word of argument the opinions, deliberately formed, of every President of the United States from Washington to Arthur, with the possible exception of Polk and Pierce,

¹ Fourth resolution, Democratic platform of 1839-40.

and of almost every statesman of all sections, parties, and times, save those of Calhoun's South Carolina school. Whatever authority might be claimed for a constitutional principle thus proclaimed, and sanctioned by the triumph of the party which championed it, was lost when that party—in full control of the legislative and executive departments of the government, and therefore responsible for acts performed—passed a tariff law which violated the principle so grossly that the President withheld his signature from it.

We may assume then that the constitutional question is closed, and proceed to examine the arguments by which the disputants on each side have supported their position. Since the great discussion which terminated when South Carolina attempted to nullify the tariff laws, no new argument has been advanced. When doubt was freshly raised in 1892, those who took part in the controversy showed clearly that they had not even studied the abundant literature of the subject. It is a necessary part of such a work as this to bring together in a comprehensive summary all the points which have ever been adduced in support of and in opposition to the constitutional power to enact a protective tariff. The writer can make no secret of his opinion that the weight of argument—and still more the weight of authority—is overwhelmingly on the side of the protectionists. But he has endeavored to set forth the contentions of those who dispute the constitutional power in their strongest form and, wherever space permits, in their own words. On the other hand, he does not hesitate to introduce some corroborative points in favor of the right, which are novel so far as a prolonged and diligent study of all the literature of the question discloses.

It has been said already that the first suggestion adverse to the constitutionality of protection by means of tariff duties went no further than an intimation of a doubt

if the admitted right to grant protection incidentally by arranging the duties laid for purposes of revenue extended to the making of a tariff chiefly for protection. This was Webster's position in 1820. But there was no comfort for the strict constructionists in this principle, and they soon found reason to hold not only that the encouragement of manufactures was neither an express nor an implied power of Congress, but that it was pointedly and intentionally withheld by the convention which framed the Constitution. They even maintained — contradicting the view that the Constitution had withheld from the States the power to protect their own manufactures, by means of impost duties — that it expressly conferred that power upon them, and therefore undoubtedly prohibited it to the general government. Although this was the historical course of the discussion, the process must be reversed in a logical examination of the subject, and the question of "incidental" protection taken last.

The position of the opponents of the constitutionality of protection may be put in broad outline, thus: The Constitution of the United States creates a government of limited powers, carefully enumerated. The power to lay and collect an impost is granted for certain specified objects, and for those only. Among those objects is not to be found the protection of manufactures. Nor is the power to protect any branch of industry to be derived reasonably from any of the expressed powers. The right to regulate commerce does not include it because (1) commerce, agriculture, and manufactures are distinct varieties of human occupation, and if the convention of 1787 had intended to grant a power to regulate manufactures it would have said so; and (2) since a protective tariff is inimical to commerce, as that term is generally understood, regulation of commerce in that form would be destructive to it. Furthermore, a study of the debates in the convention leads to the conclusion that it was not the

intention of that body to confer the power upon the general government; and a consideration of the debates in the State conventions that ratified the Constitution confirms this view. While it is admitted that the grant of the taxing power is in such form and phrase as to raise great difficulty in the way of submitting the constitutionality of any tariff law to the arbitrament of a court, yet a law which disregards the need of revenue and imposes taxes which benefit one industry or class of industries at the expense of the rest is contrary to the spirit of the Constitution, even though it does not palpably contravene its letter.

The answer to this position is a general denial. It is admitted that the Constitution contains no express grant of power over manufactures, but it is contended that it is among the most obvious of the "implied powers," and was so understood to be by the members of the convention and their contemporaries. It is further held that the difficulty of submitting a tariff law to the revision of the Supreme Court arises from the fact that the question that would be so submitted would be as to the manner in which Congress has exercised an express power, and the motive of Congress therein; which of itself is an answer to the point that protection is contrary to the "spirit" of the Constitution.

In the early days of the controversy the discussion was upon that clause of the Constitution which grants a general power of taxation. That clause, Article I., Section VIII., is as follows:—

The Congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States.

Then follow seventeen distinct enumerated powers, separated one from another by semicolons, the last of which is:

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

Some writers have held that the words "to pay the debts and provide for the common defence and general welfare" constitute a distinct grant of power. They appeal in support of this contention to the official copy of the Constitution in which, they say, there is a semicolon before the phrase and after the word "excises." This view has not been taken by any of the more profound students of the constitutional question. The history of the addition of the phrase to the bald grant of the power of taxation proves conclusively that there was no intention on the part of the convention by these words to enlarge, but rather to define, the purposes for which taxes might be imposed. An erroneous punctuation of a sentence — and it is disputed that the two clauses are separated by a semicolon — could not be urged against the historical evidence that the clauses are to be taken together. The evidence equally forbids us to regard the phrase as meaningless.¹ The convention took too much pains, both in modifying the plain grant of the power to lay taxes and in the choice of the words of modification, to leave room for a theory that the clause possesses no significance.

The position taken by the strict constructionists was that the clause was but introductory to and generally inclusive of the specific enumerated powers that followed it in the text, as though its meaning were "to pay the debts of the United States and for the following purposes, namely ;" that, in other words, those enumerated powers were the definition of what was intended by the phrase "common defence and general welfare." They main-

¹ Mr. Madison, in his letter to Mr. Speaker Stevenson, in 1830, referred to it as "harmless words."

tained that beyond the specified powers and those strictly necessary and proper for the exercise of them,¹ nothing was permissible, since, by the tenth amendment to the Constitution, —

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Story² examines exhaustively this theory, and rejects emphatically the idea that the subsequent clauses are a development of the phrase "common defence and general welfare." He shows that it makes the phrase meaningless and redundant; and he accepts and quotes approvingly the ideas expressed by Mr. Jefferson in his opinion on the Bank of the United States, in 1791: "To lay taxes to provide for the general welfare of the United States is to lay taxes *for the purpose* of providing for the general welfare. For the laying of the taxes is the *power* and the general welfare the purpose for which the power is to be exercised. Congress are not to lay taxes *ad libitum* for any purpose they please, but only to pay the debts or provide for the general welfare of the Union. In like manner they are not to do anything they please to provide for the general welfare, but only to lay taxes for that purpose. To consider the latter phrase not as describing the purpose of the first but as giving a distinct and independent power to do any act they please which might be for the good of the Union would render all the preceding and subsequent enumerations of power completely useless. It would reduce the whole instrument to a single phrase, that of

¹ The doctrine of "implied powers" in the Constitution, so convincingly set forth by Chief Justice Marshall in his opinion in the case of *McCulloch v. Maryland*, was accepted by the strict constructionists with great reservation. It is here assumed that the reader is acquainted with the interpretation which gives such latitude to the words "necessary and proper" as enables Congress to exercise discretion in the choice of means and confers the attribute of sovereignty in a real sense upon the general government.

² Commentaries, book iii. chap. xiv.

instituting a Congress with power to do whatever would be for the good of the United States; and as they would be the sole judges of the good or evil, it would also be a power to do whatever evil they pleased."

John Quincy Adams, while using nearly the same words as Jefferson, in giving his interpretation of the phrase really adopted a somewhat greater latitude of construction. He denied with great emphasis, in his letter to Mr. Speaker Stevenson,¹ in 1832, that he thought the clause "to provide for the common defence and general welfare" contained a grant of power. But he laid stress upon the significance of the word "provide," as including a "prospective" meaning — the idea evidently being that the word enlarged the scope of the power.

There is evidently room for wide differences of opinion as to the effect of the words, if it be assumed, as almost all writers have assumed, that they are not merely "harmless words," but that they have a meaning of their own. Von Holst, in commenting upon them, says:² "Further restrictions of the right of taxation result from the fact that Congress can exercise it only for the fulfilment of the objects enumerated. The expression 'general welfare' is indeed so comprehensive and vague that the discretion of Congress is given the widest play. But how-

¹ Mr. Adams, as chairman of the Committee on Manufactures of the House of Representatives, in that year made an elaborate report sustaining the constitutionality of a protective tariff. The strict constructionists thereupon made public, through the columns of the Richmond "Enquirer," a letter written by Mr. Madison to the Speaker in 1830, strongly combating the idea that the clause so often quoted contained a substantive grant of power. The letter was written with reference to the right to make internal improvements, which Mr. Madison opposed; but it was equally applicable to the right to enact a protective tariff, which he favored, though finding the warrant for it in another clause of the Constitution. Soon after the publication of Mr. Madison's letter, Mr. Adams addressed the Speaker in another letter of great length. Mr. Madison's letter was reprinted in the "Banner of the Constitution," vol. iii. p. 217; Mr. Adams's may be found in the "National Intelligencer" for July 12, 1832.

² "The Constitutional Law of the United States."

ever much this expression may be stretched, the mention of the three general purposes [to pay the debts, etc.] makes it certain that for other purposes no federal taxes can be levied. There are certain bounds, more or less clearly marked, within which the right of taxation unquestionably cannot be exercised. Above all, everything which comes exclusively within the jurisdiction of the States must be left alone by Congress. Every tax which is confessedly laid for a private purpose is unconstitutional. But the tax laws of Congress never specify an object to which the funds yielded by the tax shall be applied.¹ The courts are therefore not in a position to guard against the burdens imposed by a law upon the ground that an unconstitutional application of the resulting funds is intended. . . . In the nature of things, the legislative and not the judicial power has to discover what the general welfare demands and what may promote it."

This is almost to find a substantive power in the words so many times quoted. George Ticknor Curtis goes still further. He appends to copious extracts from Chief Justice Marshall's opinion on "implied powers," a paragraph in which he says: "If Congress is of opinion that in levying duties on foreign merchandise it will promote the common defence and general welfare of the United States to lay the duties so as to protect our own manufactures from the injurious effect of foreign competition, it is perfectly legitimate and constitutional for it to do so. This

¹ This statement is generally true. But the application of the revenue from certain taxes to specific objects in other than tax laws is not unknown. Section 5 of the act of February 25, 1862, — the Legal Tender Act, — provided that all duties on imported goods should be paid in coin or in notes payable on demand, and that the coin so paid should be set apart as a special fund and applied, first, to the payment in coin of the interest on the debt of the United States, second, to the creation of a sinking fund for the extinction of the principal of the debt, and, third, to the general purposes of the Treasury.

is neither a strict nor a latitudinarian construction. It is a necessary and rational construction."¹

It will be seen that the acceptance of any one of the opinions just cited carries with it at least a partial sanction of a protective tariff under this clause of the Constitution. It may even be found in Jefferson's interpretation; since Congress has by it the right to judge what is for the general welfare, and, while it has not the right to do whatever it pleases for that object, has the right to lay taxes to promote it, — which is precisely what the protectionists maintain.

But the strict constructionists say that this power cannot be inferred because the power of taxation was granted for the purpose of enabling the government to obtain revenue, a purpose not merely distinct from but inconsistent with that of protecting manufactures by restrictive or prohibitory duties; for the prohibitory system must end in destroying the revenue from imposts. It has been said that the system is a violation of the spirit and not of the letter of the Constitution. The distinction is not material. The Constitution may be as grossly violated by acting against its meaning as against its letter. The Constitution grants to Congress the power of imposing a duty on imports for revenue, which power is abused by being converted into an instrument for rearing up the industry of one section of the country on the ruins of another. The violation, then, consists in using a power

¹ "Constitutional History of the United States," vol. ii. p. 189. The whole paragraph from which these sentences are extracted is inclosed in quotation marks in such a way as to indicate that it was taken from the judgment of the court in the case of *McCulloch v. Maryland*. The editor of Mr. Curtis's work, the second volume of which was prepared and published after his death, says in reply to an inquiry by the writer that the quotation marks were left in the book through a failure of the printer to make a correction noted on the proof. He adds his opinion that the paragraph "was one of Mr. Curtis's happiest condensations, not alone of the decision of *McCulloch v. Maryland*, but of the *charta maxima* itself in respect to federal taxation."

granted for one object to advance another, and that by a sacrifice of the original object. It is, in a word, a violation by perversion, the most dangerous of all, because the most insidious and difficult to resist.¹

The foregoing argument raises in the simplest and broadest form the question whether under the Constitution Congress has authority to lay taxes for any other purpose than revenue. The argument itself consists in asserting that the power of taxation was given to Congress for purposes of revenue, and deducing therefrom the conclusion that taxation for any other purpose is a violation of the spirit, if not of the letter, of the Constitution. But the point assumed is the point to be proved; and it is proved neither by the letter nor by the spirit of the Constitution. The letter of the Constitution gives Congress a plenary power to lay taxes. If revenue were the only admissible object of taxation the limitation to that purpose would hamper if it did not completely annul the discretionary power of Congress. There would remain no right of selection of objects of taxation. The sole question that could be considered constitutionally would be, What rate of impost upon all goods brought into the country will yield the revenue required by the government? Even this simple problem might at times lead Congress into unconstitutional action. For since it is a well-known fact that a reduction of rates of duty frequently results in an increase of revenue, it might easily happen that Congress, finding the revenue excessive, and not being authorized by the Constitution to discriminate by admitting any foreign merchandise free of duty, would be compelled to make the necessary reduction of revenue by a "horizontal" increase of the general rate of duty. Yet that would be to lay taxes not to raise but to restrict

¹ The foregoing paragraph is Justice Story's summary of the argument of Mr. Calhoun, contained in the "Exposition and Protest" of the South Carolina House of Representatives, in December, 1829.

revenue; and while it would not be done for the purpose of protection, it would be for a purpose equally with protection not expressly mentioned in the Constitution. Judge Johnson, of South Carolina, urged in the Philadelphia free trade convention, in 1831, and it was not uncommon for South Carolinians of that time to maintain, that the only constitutional tariff was one levied, without discrimination as to articles or as to rates, upon all foreign merchandise. The dilemma just suggested, putting Congress under the necessity of taking unconstitutional action — according to this theory — in order to relieve the people of taxation, was presented in the address of the New York tariff convention. It illustrates clearly the fact that restriction absolutely to revenue as the sole matter to be considered in making a tariff would sometimes reduce Congress to a condition of impotence.¹

Laying aside for the moment the specific application of the principle — a tariff for revenue only — to the particular case of protective duties, we see that the Constitution confers upon Congress the right of indirect taxation, limited, if at all, only by the words "to pay the debts and provide for the common defence and general welfare of the United States." It is indisputable² that it is the practice of all nations, and was so at the time the Constitution was framed, to exercise the taxing power for a great variety of objects, of which revenue was admittedly the first and most usual. But they were accustomed to

¹ Curtis takes a view of this question which is shared by no other writer, so far as has been discovered. He asserts that "there never was and never can be a tariff for any purpose but revenue. The highest protective tariff ever enacted was enacted for the purpose of obtaining revenue for the support of government, and as we have seen from the preamble of the law of 1789 its provisions were framed for the express purpose of protecting and encouraging American manufactures." For these reasons, which do not seem self-consistent, he pronounces the dogma of a tariff for revenue not only "specious, but false and delusive" (vol. ii. p. 190).

² In this paragraph the argument and for the most part the words of Story in dealing with this point are closely followed.

use it to prohibit the importation of noxious articles of consumption, for a temporary restraint of trade, to suppress particular employments, to retaliate upon foreign monopolies, and to countervail injurious commercial regulations of other governments, as well as for the protection of domestic industry.¹ If then the power of taxation is general and not expressly limited to the purpose of revenue, why shall it, important though it be, be singled out as the sole purpose for which taxes may be laid? It cannot be maintained that raising revenue is the only proper mode of using the taxing power to provide for the common defence and general welfare, even if the meaning of that phrase be restricted to the enumerated powers that follow in the text. Story continues:—

No man will pretend to say that all those enumerated powers have no other objects or means to effectuate them than revenue. Revenue may be one mode but it is not the sole mode. Take the power "to regulate commerce." Is it not clear from the whole history of nations that laying taxes is one of the most usual modes of regulating commerce? Is it not in many cases the best means of preventing foreign monopolies and mischievous commercial restrictions? In such cases then the power to lay taxes is confessedly not for revenue. If so, is not the argument irresistible that it is not limited to purposes of revenue? Take another power—the power to coin money and regulate its value and that of foreign coin; might not a tax be laid on certain foreign coin for the purpose of carrying this into effect by suppressing the circulation of such coin or regulating its value? Take the power to promote the progress of science and useful arts; might not a tax be laid on foreigners and foreign inventions in aid of this power so as to suppress foreign competition or encourage domestic science and arts? Take another power, vital in the estimation of many statesmen to the security of a republic,—the power to provide for organizing, arming and disciplining the militia; may not a tax be laid on foreign arms, to encourage the domestic manufacturers of

¹ See Smith's "Wealth of Nations," book v. chap. ii. art. 4.

arms, so as to enhance our security and give uniformity to our organization and discipline? Take the power to declare war, and its auxiliary powers; may not Congress, for the very object of providing for the effectual exercise of these powers and securing a permanent domestic manufacture and supply of powder, equipments and other war-like apparatus, impose a prohibitory duty upon foreign articles of the same nature? If Congress may in any or all of these cases lay taxes, then, as revenue constitutes upon the very basis of the reasoning no object of the taxes, is it not clear that the enumerated powers require the power to lay taxes to be more extensively construed than for purposes of revenue? It would be no answer to say that the power of taxation, though in its nature only a power to raise revenue, may be resorted to as an implied power to carry into effect these enumerated powers in an effectual manner. That would be to contend that an express power to lay taxes is not coextensive with an implied power to lay taxes; that when the express power is given it means a power to raise revenue only, but when it is implied it no longer has any regard to this object. How then is a case to be dealt with of a mixed nature, where revenue is mixed up with other objects in the framing of the law? ¹

¹ Book iii. chap. xiv. Mr. Justice Story concludes his powerful statement, from which the above is an extract, with a paragraph — which is substantially repeated after his examination of the clause “to regulate commerce” — in which he seems to dissociate himself from the argument which he has just been presenting. “Such is a general summary of the reasoning on each side, so far as it relates to the power of laying taxes.” And again: “Such is a summary (necessarily imperfect) of the reasoning on each side of this contested doctrine. The reader will draw his own conclusions; and these commentaries have no further aim than to put him in possession of the materials for a proper exercise of his judgment.” It is nevertheless to be said that by far the largest part of the reasoning by which the protection side of the controversy is supported is Story’s, and is to be found nowhere else in the literature of the subject. Moreover, it is put forward with the ingenuity and zest of an original thinker sustaining his own opinion, rather than in the judicial tone of a reporter of the opinions of others. This fact impressed itself upon the mind of Chancellor Kent, who adopted a somewhat similar attitude of non-committalism, and nevertheless also revealed his own real thought in a note. “Mr. Justice Story,” he says, “has stated at large the arguments . . . and without giving any

"The Congress shall have power . . . to regulate commerce with foreign nations." The hottest debates have raged about the six words that form this grant of power. No broader or stronger statement of the argument in favor of the employment of the power to regulate trade in the encouragement of domestic industry has ever been made than is contained in the first of two letters written by Mr. Madison, in 1828, to Mr. Joseph C. Cabell, of Virginia. The first letter referred to the constitutionality of a protective tariff, the second to its expediency. Mr. Madison's argument, in his own words but somewhat abbreviated, was as follows:—

It is a simple question under the Constitution of the United States whether the power to regulate trade with foreign nations, as a distinct and substantive item in the enumerated powers, embraces the object of encouraging by duties, restrictions and prohibitions the manufactures and products of the country? And the affirmative must be inferred from the following considerations:—

1. The meaning of the phrase "to regulate trade" must be sought in the general use of it; in other words, in the objects to which the power was generally understood to be applicable when the phrase was inserted in the Constitution.

2. The power has been understood and used by all commercial and manufacturing nations as embracing the object of encouraging manufactures. It is believed that not a single exception can be found.

3. This has been particularly the case with Great Britain, whose commercial vocabulary is the parent of ours. A primary object of her commercial regulations is well known to have been the protection and encouragement of manufactures.

opinion of his own on that contested doctrine has left the reader to draw his own conclusions. I should think, however, from a view of the arguments as stated, that every mind which has taken no part in the discussions and felt no prejudice, or territorial or party bias on either side of the question, would deem the arguments in favor of the congressional power vastly superior. The learned commentator I should apprehend to be decidedly of that way of thinking" (*Commentaries*, 7th ed. vol. i. p. 289, *note*).

4. Such was understood to be a proper use of the power by the States most prepared for manufacturing industry, whilst retaining the power over their foreign trade.

5. Such a use of the power by Congress accords with the intention and expectation of the States in transferring the power over trade from themselves to the government of the United States. . . .

6. If Congress have not the power it is annihilated for the nation, a policy without example in any other nation, and not within the reason of the solitary one in our own [referring to the prohibition of a tax upon exports]. . . .

7. If revenue be the sole object of a legitimate impost, and the encouragement of domestic articles be not within the power of regulating trade, it would follow that no monopolizing or unequal regulations of foreign nations could be counteracted; that neither the staple articles of subsistence nor the essential implements for the public safety could under any circumstances be insured or fostered at home by regulations of commerce, the usual and most convenient mode of providing for both; and that the American navigation, though the source of naval defence, of a cheapening competition in carrying our valuable and bulky articles to market, and of an independent carriage of them during foreign wars, when a foreign navigation might be withdrawn, must be at once abandoned or speedily destroyed; it being evident that a tonnage duty in foreign ports against our vessels and an exemption from such duty in our ports in favor of foreign vessels must have the inevitable effect of banishing ours from the ocean. . . .

8. That the encouragement of manufactures was an object of the power to regulate trade is proved by the use made of the power for that object in the first session of the first Congress under the Constitution, when among the members present were so many who had been members of the federal convention which framed the Constitution, and of the State conventions which ratified it; each of these classes consisting also of members who had opposed and who had espoused the Constitution in its actual form. It does not appear from the printed proceedings of Congress on that occasion that the power was denied by any of them. . . .

A further evidence in support of the constitutional

power to protect and foster manufactures by regulations of trade, an evidence that ought of itself to settle the question, is the uniform and practical sanction given to the power by the general government for nearly forty years, with a concurrence or acquiescence of every State government throughout the same period and, it may be added, through all the vicissitudes of party which marked the period. No novel construction, however ingeniously devised or however respectable and patriotic its patrons, can withstand the weight of such authorities or the unbroken current of so prolonged and universal a practice.

All the points made in the foregoing extract from Mr. Madison's letter have been the subject of heated controversy. We shall examine them in the above order: (1) that the phrase "to regulate commerce" had, as borrowed from the British business vocabulary, and as ordinarily used in this country when the Constitution was framed, a signification which justifies the laying of an impost for the purpose of protecting manufactures; (2) that it was so understood by the States, before they relinquished the right to protect their own manufactures; (3) that the States have, by ratifying the Constitution, surrendered that right, and therefore, if Congress does not possess it, it is "annihilated for the nation;" (4) that contemporaneous construction, and long-continued and universal acquiescence in the construction, sanctioning the application of the power to regulate commerce to the encouragement of manufactures, cannot be overthrown by verbal criticism.

If it were possible to establish the first point beyond further controversy, the discussion would of course be at an end; for a single fact directly proving that the convention of 1787 intended, in the expression "to regulate commerce," to include the tariff encouragement of manufactures, would demonstrate also the power of Congress in that direction. Such proof is lacking,¹ and the interpre-

¹ It might be found, were it possible to verify a statement by Mr. Web-

tation of the expression has been contested at every point. It is first of all denied that it was the British understanding of the phrase. Of many versions of the denial we select that contained in a communication in the Boston "Commercial Gazette," signed "A Bostonian,"¹ as the strongest of all.

If by encouragement of manufactures in Great Britain [the writer says] is meant the prevention of manufacturing in the colonies, and compelling them to receive and consume those of Great Britain by restricting their trade exclusively to the importation of those articles from the mother country, the assertion in this particular is correct; but if by encouragement is meant that duties were imposed on importations into the colonies for the encouragement of manufactures in Great Britain (and if this be not the intended meaning it has no application or relation to the question), we must declare our total dissent from the correctness of the proposition. The regulations of trade were intended for the benefit of commerce and the encouragement of navigation.

The writer cites several acts of Parliament which are undeniably acts for the regulation of trade, which nevertheless have no reference to protecting manufactures, but are wholly for the benefit of British shipping. He challenges Mr. Madison to bring proof in support of his assertion that the encouragement of manufactures at home was a commonly understood interpretation of the phrase "to regulate commerce," and offsets the ex-President's statement with his own conclusion, as follows:—

ster in the Senate, March 22, 1838, to the effect that Franklin, on the eve of the assembling of the convention of 1787, read to a circle of his friends in Philadelphia a paper "respecting the powers which the proposed new government ought to possess," in which he expressed the opinion "that in regulating commerce Congress would adopt a course which should to some degree protect the manufactures of the North." The paper is not to be found in Franklin's published works. If such a paper was really written, it would derive great force from the fact that Franklin was a most earnest free trader.

¹ See the "Free Trade Advocate," vol. i. p. 89.

From what has been said we think it follows that the meaning of the phrase as generally understood and used before it was inserted in the Constitution of the United States was a power to monopolize the trade of the colonies in the mother country ; " to preserve or promote a mutually beneficial intercourse between the several constituent parts of an empire," dominion, or country under one government ; to prescribe the terms and conditions on which the ships of foreign powers shall enter and depart ; to prohibit or restrict the general or any particular trade of the country ; to promote the increase of shipping and navigation ; to protect and encourage them, and to lay duties on ships or merchandise for all or any of these purposes. If this enumeration of the powers embraced by the phrase " to regulate trade " be correct, it follows that the power to impose duties upon imports for the sole purpose of protecting and encouraging manufactures is not comprehended within the phrase — nor is the power to do anything included in it that shall not have the benefit of commerce for its object.

The writer further argues that while Great Britain did undoubtedly enact laws to protect its manufactures, these were not by their titles nor in the common speech of public writers and statesmen referred to as regulations of trade ; that the power to make such laws was not regarded as similar in source or in purpose to the power over shipping and navigation ; and consequently that no argument can be drawn from the British construction of the phrase, unless it be an argument which excludes the application of it to the protection of manufactures. The force of this reasoning must in candor be admitted. If the point as to the significance of the phrase as used in acts of Parliament were conclusive, it would be necessary, unless proof of Mr. Madison's assertions could be brought, to abandon the appeal to this clause of the Constitution for sanction of protection. But it is the American use of the phrase and not that of Englishmen which is in controversy. Granting " A Bostonian's " premises without reservation, it is easy to see how it might happen that the colonists,

finding that British regulations of trade for the benefit of English shipping hindered and prevented them from engaging in manufacture, might apply the phrase to whatever measures they should adopt to free their own manufactures from the disadvantage. That the phrase was so understood in America is certain; and the fact is of vastly greater importance than any deductions from the British use of it. Nothing, it is true, can be cited from the debates in the constitutional convention in support of this statement. But Mr. Madison himself, in speaking upon Mr. Fitzsimons's protection proposition in the First Congress, referring to the States which were "ripe for manufactures," said that "while those States retained the power of making regulations of trade they had the power to protect and cherish such institutions. By adopting this Constitution they have thrown the power into other hands."¹

Mr. Madison stood in a peculiar relation toward the Constitution. He was the voluntary reporter of the debates in the convention. He wrote out his notes each day during the session or before the meeting the next day, and was not absent from a single meeting, or "more than a casual fraction of an hour," as he tells us in the introduction to the debates, on any day. No man could possibly have known better than he the spirit of the convention; and since his testimony was never contradicted by any other member, and since his interpretation of the phrase was put upon it only two years after the Constitution was framed, in the presence of many others who had sat with him in the convention, it might well be accepted as final. That it is not so accepted is the only reason for a continuance of the controversy. It is worthy of remark that the Cabell letters made a deep impression upon the mind of Daniel Webster, — almost the first person, as has already been remarked, to intimate a doubt as to the

¹ See page 41.

constitutionality of protection, — who said, in his celebrated reply to Hayne, “Mr. Madison’s publication has put the power in a very strong light. He has placed it, I must acknowledge, upon grounds of construction and argument which seem impregnable.”

If we concede that the interpretation of the words “to regulate commerce” be not indisputable, we must next inquire if those words may reasonably be employed to include protection by means of a tariff. Story has summarized the argument of the opponents of the power from the documents most relied upon by the strict constructionists:—

The Constitution is one of limited and enumerated powers; and none of them can be rightfully exercised beyond the scope of the objects specified in those powers. It is not disputed that when the power is given, all the appropriate means to carry it into effect are included. Neither is it disputed that the laying of duties is or may be an appropriate means of regulating commerce. But the question is a very different one whether under pretence of an exercise of the power to regulate commerce Congress may in fact impose duties for objects wholly distinct from commerce. The question comes to this, whether a power exclusively for the regulation of commerce is a power for the regulation of manufactures? The statement of such a question would seem to involve its own answer. Can a power granted for one purpose be transferred to another? If it can, where is the limitation in the Constitution? Are not commerce and manufactures as distinct as commerce and agriculture? If they are, how can a power to regulate one arise from the power to regulate the other? It is true that commerce and manufactures are or may be intimately connected with each other. A regulation of one may injuriously or beneficially affect the other. But that is not the point in controversy. It is whether Congress has a right to regulate that which is not committed to it under a power which is committed to it, simply because there is or may be an intimate connection between the powers. If this were admitted, the enumeration of the powers of Con-

gress would be wholly unnecessary and nugatory. Agriculture, colonies, capital, machinery, the wages of labor, the profits of stock, the rents of land, the punctual performance of contracts, and the diffusion of knowledge would all be within the scope of the power, for all of them bear an intimate relation to commerce. The result would be that the powers of Congress would embrace the widest extent of legislative functions to the utter demolition of all constitutional boundaries between the State and the national governments. When duties are laid not for purposes of revenue but of retaliation and restriction, to countervail foreign restrictions, they are strictly within the scope of the power as a regulation of commerce. But when laid to encourage manufactures, they have nothing to do with it. The power to regulate manufactures is no more confided to Congress than the power to interfere with the systems of education, the poor laws or the road laws of the States. It is notorious that in the convention an attempt was made to introduce into the Constitution a power to encourage manufactures, but it was withheld.

Instead of granting the power to Congress, permission was given to the States to impose duties, with the consent of that body, to encourage their own manufactures; and thus, in the true spirit of justice, imposing the burthen on those who were to be benefited. It is true that Congress may, incidentally, when laying duties for revenue, consult the other interests of the country. They may so arrange the details as indirectly to aid manufactures. And this is the whole extent to which Congress has ever gone until the tariffs which have given rise to the present controversy. The former precedents of Congress are not, even if admitted to be authoritative, applicable to the question now presented.¹

The answer to the general propositions above, which is also condensed from Story's presentation of it, is to the following effect:—

The power to regulate commerce, being in its terms unlimited, includes all means appropriate to the end and all means which have been usually exerted under the

¹ Commentaries, book iii. chap. xv.

power. No one can doubt or deny that a power to regulate trade includes a power to tax it. . . . The concessions that the power may be used incidentally to protect manufactures, when revenue is the principal design, and in order to countervail the injurious regulations of foreign powers, admit that the regulations of commerce are not wholly for purposes of revenue, or wholly confined to the purposes of commerce considered *per se*. If this be true then other objects may enter into commercial regulations; and if so what restraint is there as to the nature or extent of the objects to which they may reach which does not resolve itself into a question of expediency and policy? It may be admitted that a power given for one purpose cannot be perverted to purposes wholly opposite, or beside its legitimate scope. But what perversion is there in applying a power to the very purposes to which it has been usually applied? Under such circumstances does not the grant of the power without restriction concede that it may be legitimately applied to such purposes? If a different intent had existed would not that intent be manifested by some corresponding limitation? . . .

The motive of the grant of the power is not even alluded to in the Constitution. It is not even stated that Congress shall have power to promote and encourage domestic navigation and trade. A power to regulate commerce is not necessarily a power to advance its interests. It may in given cases suspend its operations and restrict its advancement and scope. Yet no man ever doubted the right of Congress to lay duties to promote and encourage domestic navigation, whether in the form of tonnage duties or other preferences and privileges, either in the foreign trade or the coasting trade or fisheries. It is as certain as anything human can be that the sole object of Congress in securing the vast privileges to American-built ships, by such preferences and privileges and tonnage duties, was to encourage the domestic manufacture of ships and all the dependent branches of business. . . . No one ever dreamed that revenue constituted the slightest ingredient in these laws. They were purely for the encouragement of home manufactures and home artisans and home pursuits. Upon what grounds can Congress constitutionally apply the power to regulate commerce to one great class

of domestic manufactures which does not involve the right to encourage all? If it be said that navigation is a part of commerce, that is true. But a power to regulate navigation no more includes a power to encourage the manufacture of ships by tonnage duties, than any other manufacture. Why not extend it to the encouragement of the growth and manufacture of cotton and hemp for sails and rigging? . . . The truth is that the encouragement of domestic shipbuilding is within the scope of the power to regulate commerce simply because it is a known and ordinary means of exercising the power. It is one of many and may be used like all others according to legislative discretion. The motive to the exercise of a power can never form a constitutional objection to the exercise of the power.¹

Upon the second of Mr. Madison's points, there is but meagre evidence of a direct character going to show that the Constitution was understood by the members of the State conventions which ratified it as conferring upon Congress the right of protecting manufactures. He quotes from two speeches in the Massachusetts convention — one by Mr. Dawes, an advocate of the Constitution: "Our manufactures are another great subject which has received no encouragement by national duties on foreign manufactures, and they never can by any authority in the old confederation;" and again, "If we wish to encourage our own manufactures, to preserve our own commerce, to raise the value of our own lands, we must give Congress the powers in question." Mr. Widgery, an opponent of the Constitution, said, "All we hear is that the merchant and farmer will flourish, and that the mechanic and tradesman are to make their fortunes directly if the Constitution goes down." This is obviously too vague as well as too slender to be accepted as proof direct of an opinion prevailing in the manufacturing States; but the indirect

¹ The argument in this paragraph is identical in substance and in illustration with that contained in the address of the New York Tariff Convention of 1831, and was doubtless taken by Story from that source.

proof will be discovered in considering Mr. Madison's fourth point.

The third point, that the States have surrendered the right to protect manufactures, met with a positive denial from the strict constructionists. They maintained, as is noted in Story's summary of their argument, that the convention of 1787 denied the request of those interested in manufactures, that a power should be given to Congress to encourage them; and that a certain clause of the Constitution was inserted therein with a purpose to permit the States, with the consent of Congress, to levy import duties for the purpose of protection.

The first of these contentions rests upon the following circumstances: On the 18th of August, 1787, two series of propositions were offered in the Federal Convention, for the purpose of being referred to the Committee on Detail. Those presented by Mr. Madison included, beside certain powers which were ultimately embodied in the Constitution, the power to grant charters of incorporation in certain cases, to establish a university, and to encourage by premiums and provisions the advancement of useful knowledge and discoveries. Mr. Pinckney's propositions, eleven in number, were generally the same, in other phraseology, as Mr. Madison's; but one of them was as follows:—

To establish public institutions, rewards and immunities for the promotion of agriculture, commerce, trades and manufactures.

When the Committee on Detail reported, not one of these powers was submitted for consideration by the convention; and the only relic of all the propositions relating to manufactures was the clause relating to copyright and patents. Furthermore, on the 20th of August, Mr. Gouverneur Morris submitted a scheme for a Council of State, one of the members of which was to be a Secretary of

Domestic Affairs, whose duty it was to be "to attend to matters of general police, the state of agriculture and manufactures, the opening of roads and navigations, and the facilitating communications throughout the United States." This also found its grave in the Committee on Detail. Here, then, it was urged, were two distinct propositions to give Congress jurisdiction over manufactures, and both were rejected. From which facts the inference was drawn that the convention intended to withhold the power from Congress.

With reference to the proposition of Mr. Morris, it will be noticed that it provided for a cabinet, to be called a "Council of State," and that it was the whole proposition, and not any specific part of it, that was "rejected" — if that term can be properly applied to a suggestion made by one member, never debated, and never even reported for consideration. Moreover, if such rejection of a proposition that there should be a secretary "to attend to matters of . . . manufactures" indicates an unwillingness on the part of the convention to give the general government power over manufactures, the simultaneous rejection of a proposition to create a Department of Foreign Affairs, to be presided over by a secretary having a duty "generally to attend to the interests of the United States in their connections with foreign powers," proves the unconstitutionality of the act of the First Congress creating the Department of State. No argument need be wasted upon the so-called rejection of Mr. Morris's Council of State.

The strict constructionists really placed much reliance upon the similar "rejection" of Mr. Pinckney's proposition of "public institutions, rewards and immunities" for the benefit of commerce. There were no collateral or additional facts to those given above. The suggestion was referred to the Committee on Detail, without debate, and it never reappeared. The argument was, of course, that a specific power over manufactures being proposed and not

granted, it falls within the prohibition upon Congress with reference to the exercise of powers not delegated ; but that there was substituted for it as the sole permissible method of encouraging manufactures the privilege of granting patent rights. It is put in its strongest form by "Sulpi-
cius," the writer of a long series of "Strictures on the Commentaries of James Kent," in the "Banner of the Constitution": —

Now a power to promote a specific object by a prescribed mode excludes the power to promote it by any other mode. To this proposition every person must at once assent, for it is a maxim in law that *expressio unius est exclusio alterius*. But in the above power to promote the progress of science and the useful arts the mode in which it shall be done is specifically limited and described. Every other mode is therefore prohibited. The grant of power in question therefore is an *affirmative pregnant*. It is an affirmative of the power of Congress to promote science and the useful arts in one way and a negative of their authority to encourage them in any other way.¹

It does not appear that this argument received the compliment of a reply from any writer or speaker who maintained the constitutionality of protection. Repeated time and again in the South Carolina memorials and remonstrances, and in the speeches of congressmen, it passed unnoticed. Story dismisses the "rejected" power in a brief paragraph as having "no bearing on the question," and as being "much more broad in its extent and objects than the power to encourage manufactures by the exercise of another granted power." Nevertheless, it is plausible in form, and seemed to those who used it unanswerable. Some writers, in order to strengthen the argument, called attention to the fact that the advocates of a national university — proposed by Mr. Madison and Mr. Pinckney at the same time — brought their project forward again and were defeated, but that those who advocated protection to

¹ "Banner of the Constitution," March 30, 1830.

manufactures saw that the case was hopeless and did not venture to urge it again.

Mr. Charles Pinckney took a prominent part in the formation of the Constitution. His preliminary draft, offered on May 29, 1787, the first business day of the session of the convention, has unfortunately been lost. But the report of his speeches shows him to have been a precise, concise, and direct writer. Such a man could not have employed the clumsy and periphrastic expression "public institutions, rewards and immunities" as applying to any measure which is correctly described as protection of manufactures. This will be evident if we suppose that Mr. Pinckney's phrase had found its way into the Constitution. South Carolina could have made a much better argument against an interpretation which based the authority for a protective tariff upon it, than it made upon the clause "to regulate commerce." In any event, a reply sufficiently conclusive may be made similar to that suggested in the case of Mr. Morris's proposition — that other powers linked with it, and equally with it "rejected," have been exercised without question, and even sustained by the Supreme Court. For example, the power "to grant charters of incorporation" was conspicuously affirmed in the great case of *McCulloch v. Maryland*. The suggestion as to the revival and defeat of the proposition to authorize the establishment of a university is both fatal to the theory that the "rejection" of Mr. Pinckney's clause necessarily implied hostility to it and suggestive of the more reasonable theory. The revival of the university project was on September 14, three days before the convention adjourned. Just before the vote was taken Mr. Gouverneur Morris remarked, "It is not necessary. The exclusive power at the seat of government will reach the object." As a matter of fact, we know that although the authority to found a university was not expressly given in the Constitution, Washington repeatedly urged Congress to

establish such an institution. He was president of the convention, and evidently did not regard the neglect to grant the power as a denial of the power. It may in like manner be held reasonably that the convention did not intend to withhold the power to encourage manufactures, and that it did not concede the power in express terms because it regarded the right as granted amply in other clauses of the Constitution.

The assertion that the convention intentionally reserved to the States the power to protect their own manufactures is based upon the history of the following sentence from the second paragraph of Section X., Article I., of the Constitution : —

No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws ; and the net produce of all duties and imposts laid by any State on imports and exports, shall be for the use of the Treasury of the United States, and all such laws shall be subject to the revision and control of the Congress.

In form this is a prohibition and not even in suggestion a grant of power to the States to protect their manufactures by means of local duties on imports. The basis of an argument that it was intended for that purpose has been found in an address of Luther Martin, one of the delegates from Maryland in the convention of 1787, to the convention of his State. Mr. Martin was strongly opposed to the ratification of the Constitution. The extract from his address upon which the strict constructionists relied is as follows : —

By this same section every State is also prohibited from laying any impost or duties on imports and exports without the permission of the federal government. It was urged by us that there might be cases in which it would be proper, for the purpose of encouraging manufactures, to lay duties to prohibit the exportation of raw materials ;

and even in addition to the duties laid by Congress on imports for the sake of revenue, to lay a duty to discourage the importation of particular articles into a State, or to enable the manufacturer here to supply us on as good terms as they could be obtained from a foreign market. But the most we could obtain was that this power might be exercised with and only with the consent of Congress, and subject to its control. And so anxious were they to seize on every shilling of our money for the general government that they insisted even the little revenue that might thus arise should not be appropriated to the use of the respective States where it was collected, but should be paid into the Treasury of the United States; and accordingly it is so determined.

The argument deduced from this extract was presented scores of times in the writings and speeches of free traders. No form of it has been found which is more clearly and plainly expressed than that contained in the speech of the Hon. Willie P. Mangum, of North Carolina, in the Senate on February 9, 1832.¹

It being perceived that no substantive power would be conferred on Congress to protect domestic manufactures and that the States were about to be deprived of the power of doing it by duties, a struggle was commenced on the 28th of August which was continued at intervals to the 15th of September, within two days of the adjournment of the convention. This struggle called forth some of the ablest men in that illustrious body, among whom Luther Martin was particularly distinguished, in opposition to the principle prohibiting the States to lay import or export duties without the consent of Congress. The discussion turned mainly upon the interests of manufactures; and the object was to retain in the States a concurrent power with Congress. On the 15th of September the clause was adopted which now forms a part of the tenth section of the first article. By that clause the

¹ Mr. Mangum, like Mr. Berrien, whose case has been previously mentioned (p. 299), became a Whig and voted with his party in the Senate for the act of 1842 and against the Walker tariff in 1846.

States may, without the consent of Congress previously obtained, lay such imposts or duties as may be absolutely necessary for executing their inspection laws, and with the consent of Congress may lay such imposts or duties on imports and exports as may be necessary to protect their manufactures, upon the proviso of paying the duties into the public treasury. If this latter power is not retained in the States to protect manufactures, for what is it retained? It cannot be for revenue, for this is to go into the public treasury. If then it is not wholly nugatory it can be for nothing else than to enable the States to encourage the interests of manufactures.

In another passage in the same speech Mr. Mangum said of Mr. Martin: "He had borne a distinguished part in the convention at Philadelphia. With an eye that watched every movement and a mind that comprehended every principle, no man better understood, or was more able to expound the views of that body." Another writer on the same side speaks of him as "one of the statesmen who formed the Constitution." The *argumentum ad hominem* is not the strongest that can be brought in controverting a position, but in this case it is not without force. No one not hopelessly ignorant of the history of the formation of the Constitution, or disingenuous to a degree, could quote Luther Martin as an authority on the Constitution itself. He was one of the handful of members who did not affix their signatures to it. His participation in the debates was one unbroken record of opposition and criticism. There was not one provision of the Constitution which he approved. His speech before the Maryland convention is as perfect a specimen of unrelieved pessimism as may be found in the English language. All this, however, counts for nothing provided that he has given a correct account of what the convention did and what it intended, and provided also that the inferences drawn from his version of the history are justified. First the facts and then the inferences.

Mr. Pinckney's original draft of a constitution, presented on May 29, provided in Article XI. that "No State shall . . . without the consent of the Legislature of the United States, lay any impost on imports." This provision was not discussed. It was referred with all other matters to the Committee on Detail, which reported on August 6 a new draft in these words: "No State without the consent of the Legislature of the United States shall . . . nor lay imposts or duties on imports." On August 28, the day mentioned by Mr. Mangum as that on which "a struggle was commenced," Mr. Madison moved¹ "that the words 'nor lay imposts or duties on imports' be transferred from Article 13, where the consent of the General Legislature may license the act, into Article 12, which will make the prohibition on the States absolute. He observed that as the States interested in this power, by which they could tax the imports of their neighbors passing through their markets, were a majority, they could give the consent of the Legislature to the injury of New Jersey, North Carolina, etc.

"Mr. Sherman thought the power might safely be left to the Legislature of the United States.

"Colonel Mason observed that particular States might wish to encourage by impost duties certain manufactures for which they enjoyed natural advantages, as Virginia, the manufacture of hemp, etc.

"Mr. Madison. The encouragement of manufactures in that mode requires duties not only on imports directly from foreign countries but from the other States in the Union; which would revive all the mischief experienced from the want of a general government over commerce."

The question was then taken and the motion to transfer the phrase was rejected, four States in the affirmative, seven in the negative. It will be observed that the origin and nature of the "struggle" are not correctly represented

¹ Madison's Report of the Convention.

by Mr. Mangum. It was not an effort by advocates of a system of protection in order to secure for the States a right which was about to be denied to the general government. It was an effort to prevent the States from exercising in any circumstances a right to levy import duties; and that not in any degree with reference to the matter of encouraging manufactures, but with a purpose to prevent a recurrence of the evils which led, in large measure, to the movement for a new Constitution. This is particularly evident from the debate which followed immediately after that just reported. The convention, having refused to transfer the clause to the category of absolutely prohibited powers, proceeded to consider it as one of the powers to be exercised with the consent of Congress. By a vote of six States to five it inserted the words "or exports" after the word "imports" — "so as to prohibit the States from taxing either." Then Mr. Sherman moved to add "nor with such consent, but for the use of the United States." This was approved by Mr. Madison "as preventing all State imposts." It was discussed in precisely the same tone and on the same lines as the general clause relating to a tax on exports had been debated a week before, the end aimed at and accomplished by those who urged the addition of the clause being a prohibition of action by the States to tax the produce of other States passing through their territory to market.

Such is a history of the first day of the "struggle." The subject was not mentioned again until the 12th of September, when the report of the Committee on Style was made and considered. The clause appeared in the new draft of the Constitution in these words: "No State shall, without the consent of Congress, lay imposts or duties on imports or exports; with such consent but to the use of the Treasury of the United States." Colonel Mason — "the clause relating to exports being reconsidered" — offered a proviso permitting the States to lay

duties upon exports "for the sole purpose of defraying the charges of inspecting, packing, storing, and indemnifying the losses in keeping the commodities in the care of public officers, before exportation." The proviso was briefly debated on that day, and on the 13th it was offered in a modified form and adopted. Nothing whatever was said on either day which in any way suggested the subject of manufactures or of protection. The object sought to be accomplished by it was plainly expressed in the proviso, which was urged by the Virginia delegates and had reference chiefly to the laws of that State relating to the exportation of tobacco.

Two days afterward, on the last day mentioned by Mr. Mangum, "in consequence of the proviso moved by Colonel Mason and agreed to on the 13th of September, this part of the section was laid aside in favor of the following substitute, viz.;" — then follows the clause as it stands in the Constitution. A motion was made to strike out that part which gives to Congress the right to revise and control State laws, but it was defeated. Three States, none of them manufacturing States, — Virginia, North Carolina, and Georgia, — supported the motion. On the vote agreeing to the substitute, Virginia alone was recorded in the negative.

The foregoing summary of the history of this clause of the Constitution may seem to take more space than the importance of the subject justifies. But the point was greatly relied upon at one time; and it may be admitted that if it were true that the convention intended by it to reserve to the States respectively a power to protect their own manufactures by means of local duties even with the consent of Congress, a different phase would be put upon the general question of the power of Congress to protect the manufactures of the country. It is believed that a candid examination of the proceedings will show that there was at no time a "struggle" over the clause, or an

effort in connection with it to secure the right of protection to the States; and that the convention had rather the idea that it was cutting off that right than that it was leaving a loophole for the exercise of it. As for Mr. Martin's connection with the "struggle," it does not appear from the report of debates that he even attended a session of the convention after August 31. The last entry of his name in the index to Madison's Journal is of that date, and reads "dissatisfied with the general character of the Constitution." On the general question of the probability that the convention, intending to reserve a power to the States, would hedge it about with restrictions, on the one hand to permit its exercise only upon terms which would never be granted, — the consent of Congress, and under laws which Congress should always have the right to revise, — and on the other hand upon terms — the giving up of all the revenue — which would render the privilege worthless to the States; upon this there cannot be two opinions. Nor can there be a doubt in a candid mind that the convention knew too well the impotency of local import duties to effect protection, and the evils such duties entailed, to countenance any proposition under which they should be permitted.

Mr. Madison's point, that if the right to protect manufactures does not exist in Congress "it is annihilated for the nation," is established by the foregoing examination of the only clauses of the Constitution to which the strict constructionists have ever appealed. Even upon their own view it is practically prohibited to the States by the imposition of impossible terms, which allow the general government to deny the privilege altogether or to say when, how, and to what extent it shall be exercised. As to this matter, then, the sovereignty of the States has been taken away. An affirmative argument in favor of the constitutional power of Congress follows logically. Sovereign power of every sort and to its fullest extent resided

in the States after their declaration of independence. The Constitution distributed that power between the general government and the States, but extinguished none of it.¹ Consequently this particular power still exists either in the State or the Nation. The Supreme Court has never, perhaps, in express terms declared that the general government may exercise all sovereign powers prohibited to the States by the Constitution; but it virtually so declared in the *Legal Tender Case*.² The opinion of the court in that case gives ample ground for the proposition that since the States are not permitted by the Constitution to protect their manufactures by import duties, the sovereign power to do so, not having been annihilated, must reside in Congress.

This argument, those which have preceded it in favor of the constitutional right of Congress to enact protective tariffs, and all others on the same side of the question, are strengthened, reinforced, and made unassailable by the argument from contemporaneous construction, admirably and concisely put by Madison in the quotation from the first Cabell letter already given. Before entering upon this branch of the subject let us consider the validity and the limitations of the argument from contemporaneous interpretation. The following is an excellent statement of the principle:—

Lord Coke has laid down the rule that great regard in the exposition of statutes ought to be paid to the construction that sages of the law who lived about the time or soon after it was made put upon it; because they were

¹ Except in the renunciation of the power to tax exports.

² "Congress, as the legislature of a sovereign nation, being expressly empowered to lay taxes . . . and the power to make the notes of the government a legal tender in payment of private debts being one of the powers belonging to sovereignty in civilized nations and not expressly withheld from Congress by the Constitution, we are irresistibly impelled," etc. (*Opinion of the United States Supreme Court, Juillard v. Greenman*, 110 U. S. p. 449.)

best able to judge of the intention of the makers, regard being first had to the true import and meaning of the words themselves. . . . It is obvious that contemporary construction of a constitutional provision must be resorted to with much qualification and reserve. Contemporary construction is properly resorted to to illustrate and confirm the text, to explain a doubtful phrase, or to expound an obscure clause; and in proportion to the uniformity of that construction and the known ability and talents of those by whom it is given, is that credit to which it is entitled.¹

The purpose and the occasion of resorting to this method of interpretation are both found in the case of the tariff, and, judged by the test proposed, no construction of a clause or of clauses of the Constitution could have greater authority than that of the clauses relied upon to justify protective tariffs. At the beginning of the government, the second act passed by the first Congress declared in its preamble that one of its objects was the encouragement and protection of manufactures. It makes no difference to the strength of the argument whether the act did or did not afford adequate protection or any protection at all. It contained an assertion of the right to protect manufactures by means of an impost. The authors of the act, those especially prominent in framing its provisions, had been equally or more prominent in constructing the Constitution. Mr. Madison, whose connection with the Federal Convention had been one of ceaseless activity, who had, in conjunction with Mr. Hamilton, written most of the "Federalist" series of papers which expounded the principles of the Constitution to the people of the country, who regarded the introduction of protection into the first revenue measure as premature, who was himself on general principles a believer in free trade, — Mr. Madison did not suggest that an assertion of the right to protect manufactures

¹ "Commentaries on Statute and Constitutional Law." By E. Fitch Smith. Albany, 1848. Page 741.

was a usurpation. Nor did any other member of Congress suggest it, although there were many members present and participating in the debates who were animated by an extreme jealousy of the new Constitution and of its curtailment of the powers of the States. There were still other members who were earnestly opposed to the principle of protection and to the application of it in the pending tariff bill. Some collateral facts, to which so far as the study of the present writer goes no reference was ever made, are strongly corroborative of this view of the subject. Let us, first, compare the language of that preamble of the first tariff act with the clause giving the taxing power to Congress. "The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States." The preamble: "Whereas it is necessary for the support of the government, for the discharge of the debts of the United States, and the encouragement and protection of manufactures, that duties be laid," etc. The preamble is more than a suggestion of the clause containing the grant of power; it is an echo of it, or a specific application of it. One can almost fancy the author of the preamble referring to the Constitution and putting the justification of the law in language intentionally suggestive of the Constitution — saying to critics that the support of the government and the encouragement of manufactures were measures for the common defence and general welfare placed under the protecting care of Congress.

Again, throughout all the long debates and warm controversies over the constitutionality of the tariff, great stress was laid upon the provision which declares that all powers not conferred upon the general government nor prohibited to the States are reserved to the States or the people. But where is that provision to be found? Not in the original Constitution, but in the tenth amendment,

which was proposed to the States by the First Congress. The debate upon this and others of the group of twelve amendments proposed by the First Congress was proceeding simultaneously, or in alternation, with the debate upon a tariff bill which asserted the right of protection. Here, then, we have the basis of an inference so strong that nothing but the most explicit declaration could strengthen it, that Congress did not regard protection by means of duties as one of the powers which the adoption of the amendment would forbid. It thus became not merely contemporary construction, but an authoritative construction by the very body which framed the constitutional provision.

And yet again: the original theory of the President's power of veto was that it was to be exercised only in cases of action by Congress which the President regarded as unconstitutional. All acts which fell under that condemnation it was his duty, under his oath to "preserve, protect, and defend the Constitution of the United States," to return to Congress without his approval. It was therefore the duty of President Washington to examine carefully the tariff act to see if it asserted or exercised any powers not conferred upon Congress. It is fair to suppose that he did so, and that he found nothing in its preamble or its provisions violative of the great fundamental charter framed by a convention over which he himself had presided. Thus the argument from contemporary construction is perfect at every point.

Although the strict constructionists have never attempted to meet this argument, they have endeavored to show that the First Congress at its second session changed its opinion as to its own power. They draw attention to the preamble of the act of 1790, in which¹ they find evi-

¹ The preamble reads as follows: "Whereas by an act intituled 'An act for laying a duty on goods, wares and merchandise imported into the United States' divers duties were laid on goods, wares and merchandise so

dence satisfactory to themselves that Congress then expressly renounced the right of protection. There is not a word in the debates to justify the inference, and an inference directly the contrary may be drawn from the resolution of the House of Representatives adopted at the same session, calling on the Secretary of the Treasury for suggestions as to the best methods of encouraging manufactures, the resolution which drew forth his celebrated "Report on Manufactures." As has been shown already,¹ nearly all his recommendations relating to duties for the purpose of encouraging and protecting manufactures were adopted. The rates were suggested by him not with a view to revenue, but with a view to fostering certain industries. Congress never took up his propositions regarding bounties, but if any inference is to be drawn from its neglect so to do it is certainly not an inference that the power was deemed non-existent. Bounties were given in early times to the product of fisheries by means of a drawback upon the salt used in curing; in later times to agriculture, the beneficiaries being the producers of sugar. There was an attempt to procure a decision by the Supreme Court as to the constitutionality of the sugar bounties. The court found a way to decide the case brought before it without passing upon the constitutional question.² The question of the right of Congress to grant bounties is extremely interesting, but it has no bearing whatever upon the question of the right to protect manufactures by duties on imports.³

imported, for the discharge of the debts of the United States and the encouragement and protection of manufactures, and whereas the support of government and the discharge of the said debts render it necessary to increase the said duties."

¹ See page 102.

² *United States v. Realty Company*, 163 U. S. Reports, p. 427.

³ The Richmond "Enquirer" endeavored to break the force of Mr. Madison's Cabell letters by quoting from the address of the legislature of Virginia to the people of that State, written by him (Madison's Works,

The constitutional argument against protection may be said to have begun and ended with the principle that while Congress had a right so to arrange duties for revenue as incidentally to protect manufactures it had not the right to make protection a leading motive in the framing of a tariff law. The point was never more plausibly presented than by Daniel Webster, by whom it was first set forth in a form to attract public attention, in his Faneuil Hall speech on October 2, 1820. The passage has already been quoted, but it is well to repeat it: —

He thought it might be doubted whether Congress would not be acting somewhat against the spirit and intention of the Constitution in exercising a power to control essentially the pursuits and occupations of individuals in their private concerns — a power to force great and sudden changes both of occupation and property upon individuals, not as incidental to any other power but as a substantive and direct power. If such changes were wrought incidentally only and were the necessary consequence of such imposts as Congress, for the leading purpose of revenue, should enact, then they could not be complained of. But he doubted whether Congress fairly possessed the power of turning the incident into the principal; and instead of leaving manufactures to the incidental protection of such laws as should be passed with a primary regard to revenue, of enacting laws with the avowed object of giving preference to particular manufactures and with an entire disregard to all considerations of revenue; and instead of laying such imposts as would best answer the purpose of raising revenue with the least burden on the public, carrying the impost on certain articles to a burdensome excess, with a full knowledge that the increase of duty will diminish the amount of revenue raised.

In the next paragraph of his speech Mr. Webster discussed the question of the power of Congress to lose sight

vol. iv. p. 521), in which Hamilton's "Report on Manufactures" was criticised severely. But the criticism went to a particular point only, — the power to grant bounties under the "general welfare" clause.

entirely of revenue in framing a tariff law. He recognized the logical difficulty confronting one attempting to lay down a rule upon this subject, and said, "It is not easy to draw a limit, and therefore perhaps it may be presumed in all cases that the power was exercised for the legal purpose, the collection of revenue." In this last sentence is to be found the germ of the complete answer to all the arguments against the right "to turn the incident into the principal." Nevertheless, the nice distinction which is involved in Mr. Webster's Faneuil Hall speech has been the refuge of many a politician and of many a political convention during the last eighty years. Whenever it has been desirable to make a mild declaration in favor of protection at a time when public sentiment seemed adverse to the system, whenever a party in favor of low duties did not venture to proclaim its adhesion to free trade in the face of a public sentiment distinctly favorable to protection, a form of words has been employed to signify that although revenue should be the primary object of a tariff bill, protection may be its secondary object. The Republican national platform of 1860 and the Democratic platform of 1888 are examples of the two reasons for avoiding the real issue. The logical unsoundness of the position is apparent almost at a glance. A tariff for protection must be either constitutional or unconstitutional. If one duty may be modified — put at either a higher or a lower than the revenue point — for the purpose of encouraging a particular industry, all duties may be so modified. If a duty may be slightly raised with that object in view, it may be raised to a prohibitory point. Moreover, it must be as clearly unconstitutional to place on the free list an article — wool for example — in order to provide the users of that article with cheap raw material, and thus enable them to compete with foreign manufacturers, as to place a high duty on the same article in order to protect the domestic growers of wool. In short, there is no logical

stopping-place between the absolute prohibition of all considerations other than that of revenue in framing an act laying duties, and a full discretionary power in Congress to make the protection of manufactures, agriculture, commerce, or the fisheries the primary object in fixing the rates of duty. This fact has been recognized most clearly and set forth most emphatically by writers on the free trade side of the controversy. The protectionists have sometimes been content to accept the concession of the "incidental" right without troubling themselves too much about an affirmative, substantive power, unhampered by conditions.

It will have been observed that several of the authorities cited in this chapter against the constitutional power have made the point that protective tariffs violate the spirit of the Constitution, even if they can be held to be permissible by its letter. The most general answer to this objection is that the only possible rule of constitutional interpretation is to construe its language. If the Constitution has a spirit distinct from its letter, and not to be apprehended by an analytical study of its words and phrases, who is commissioned to set forth authoritatively what that spirit requires and what it forbids? The judgment of one who regards the protective system as pernicious, and who therefore cannot believe that the framers of the Constitution intended to sanction it, is entitled to no more weight than that of one who deems protection beneficial and free trade an evil, and who therefore finds ample authorization of protection in the Constitution. Nor is a question of this sort to be settled by the verdict of a popular majority. All attempts to find in the Constitution anything which is not fairly inferable from its language, or to reason away that which may be fairly inferred therefrom, is — to use a phrase of Story's, applied to another question — "to make a new constitution, not to construe the old one."

But, waiving the point partially, if the spirit of the Constitution rather than its letter is to govern our action, who were ever more qualified to ascertain and interpret the spirit than were the men of 1789, who have put on record their opinion upon the subject? This brings us back to the impregnable position defended by the contemporary construction of the Constitution. And again, is it nothing to the purpose that the spirit of the Constitution has changed vastly since the time of the First Congress? It is undeniable that the necessities of government and people, the steadily growing confidence of the people in the general government, and the consolidation of the population into one nation, effacing to a great extent the State lines, have all tended to render both more imperative and more tolerable an interpretation of the Constitution far more broad and liberal than that even of Hamilton. The result of the Civil War was to confirm and increase the tendency. The Supreme Court has rarely been behind the people, has frequently been in advance of them, in upholding the broadest construction of the Constitution. In this view of the particular case before us it may be argued with much plausibility that an interpretation denying a certain power to Congress might have been reasonable in the year 1800 and quite unreasonable in 1900. It is not a tenable position that a power exercised continuously and without opposition from 1789 to 1820 has become unconstitutional in the face of a constantly broadening view of the powers of the general government. This is not quite the same thing as saying that — as in a parliamentary body — it ever becomes too late to raise the constitutional objection; in other words, that by long and universal popular acquiescence laws originally unconstitutional, in countries having a written constitution, may become constitutional. A point is therein suggested which it is not necessary to discuss, but which is worthy of consideration. It is here merely insisted that if appeal be made to the

"spirit of the Constitution," the answer is adverse to the opponents of the protective system at whatever period of the nation's history we seek to discover that spirit.

Many writers have held that the Supreme Court would long ago have condemned the tariff acts of Congress if a case involving their constitutionality could have been brought before it. It is an assumption which is sustained by no facts. The contrary may be inferred from the very circumstance that no way has been discovered to bring a suit in which the constitutionality of protection may be the issue. The taxing power having been granted in a plenary form, any criticism upon the exercise of it must go to the motive of Congress, a matter which the court has neither the power to discover nor the right to investigate. In the whole body of the decisions of the Supreme Court for more than a century, the strict constructionists have not been able to find a single sentence which logically implies the unconstitutionality of the protective system. They have, in recent years, quoted often from a decision rendered by the court, written by Mr. Justice Miller, as applicable directly to and as explicitly condemnatory of a protective tariff. The passage quoted from the decision is as follows: —

To lay with one hand the power of the government on the property of the citizen, and with the other to bestow it upon favored individuals to aid private enterprise and build up private fortunes, is none the less robbery because it is done under the forms of law and is called taxation. This is not legislation. It is a decree under legislative forms.¹

In this case the city of Topeka had issued bonds to the amount of \$100,000 as a donation to a company engaged in the manufacture of iron bridges, to aid and encourage it in establishing its plant in the city. The principal and interest of the bonds had to be met by taxation. The

¹ *Loan Association v. Topeka*, 20 Wallace, 656.

language of the court quoted above is strictly applicable to the case before it ; but it cannot be applied to the operation of a protective tariff until it is proved that such a law does take money or property from certain persons and bestow it upon others. That is the free trade position ; but it has never been conceded by protectionists, millions of whom would abandon the principle if they believed the assertion to be true.

Moreover, it is disingenuous to suggest that the court, speaking through Mr. Justice Miller, either consciously and directly, or unwittingly and by indirection, uttered an opinion adverse to the constitutionality or the justice of protecting chosen industries by means of a tariff. Another passage from the same decision seems to have been written with an express purpose to give notice that the foregoing extract was not to be applied to the tariff. The essence of the decision lies in the fact that the establishment of bridge works was not a public use. The court pronounced the Kansas statute void because the taxation necessary to pay the interest and principal of the bonds "would, if collected, be a transfer of the property of individuals to aid in the projects of gain and profit of others," and not for a public use in the proper sense of that term. The court discussed the analogy between acts of the class which it condemned and acts permitting grants of public money to aid in the building of railroads, which also are private enterprises for the gain and profit of their owners, but have usually been adjudged also to the public benefit so far as to justify an application of public money to secure their construction. The general question was discussed broadly and the following principle laid down :—

"It is undoubtedly the duty of the legislature which imposes, or authorizes municipalities to impose, a tax to see that it is not to be used for purposes of private interest instead of a public use ; and the courts can only be justified in interposing when a violation of this principle

is clear and the reason for interference cogent." That is, the legislature ought to make the proper discrimination between what is and what is not justifiable; and the courts should ordinarily assume that the duty has been performed, and should not interfere save in urgent cases. "And," proceeded Mr. Justice Miller, "in deciding whether in the given case the object for which the taxes are assessed falls upon one side or the other of this line they must be governed mainly by the course and usage of the government, the objects for which taxes have been customarily and by long course of legislation levied, what objects or purposes have been considered necessary to the support and for the proper use of government. Whatever pertains to this and is sanctioned by time and the acquiescence of the people may well be held to belong to the public use and proper for the maintenance of good government, though this may not be the only criterion of rightful taxation."

Either both these quotations from the decision in *Loan Association v. Topeka* may be regarded as bearing upon the tariff question, or neither of them can be so cited. If the learned justice who pronounced the judgment of the court had the tariff in mind, we are quite justified in maintaining that he intended to intimate that when a case should come before the court involving the constitutionality of an act conforming to "the course and usage of the government," aiming at an "object for which taxes have been customarily and by long course of legislation levied," and "sanctioned by time and the acquiescence of the people," — all of which phrases are descriptive of protective tariffs, — the decision would be favorable to the right of Congress to pass such an act. The decision, taken as a whole, cannot be tortured into a condemnation of the protective system.¹

¹ It is interesting to note that the practice pronounced unconstitutional in the *Topeka* case is precisely that which Mr. McDuffie proposed as an

We have now passed in review every argument upon both sides of the question which a careful study of the speeches of the statesmen of the country during the whole life of the country, of commentaries on the Constitution, of newspapers, memorials, pamphlets, and essays, has brought to light. It is extremely unlikely that the constitutionality of a tariff law will ever again be seriously discussed before the people. It is still more unlikely that, should it arise again, any fresh arguments can be adduced either for or against the power of Congress in the premises. Surely, if the people of the country could appreciate the enormous inconveniences to the whole system of government which would result from an authoritative pronouncement against the unrestrained power of Congress over external taxation, they would rejoice that the question is closed forever, and would treat as disturbers of the public peace all who should endeavor to kindle a fire from the ashes of this extinct controversy.

alternative to the national protecting system, and which he declared to be permissible beyond the shadow of a doubt. In his speech in the House of Representatives, April 29, 1830 ("Register of Debates," vol. vi. part ii. p. 854), he said: "Then why do not the manufacturing States protect their own manufactures? Will it be pretended that they have not the constitutional power? Has not the legislature of every State in the Union an unlimited power to impose taxes upon the people of the State, and appropriate the proceeds in the form of bounties for the protection of domestic manufactures or any other branch of domestic industry? No man of common information — no man indeed of common sense — will deny that every State legislature has this power."

X

CLAY'S COMPROMISE

WHEN the news of the passage of the act of 1828 reached New York, the flags of some of the ships in port were placed at half mast in token of mourning over a measure which was expected to give a death-blow to American commerce.¹ There was a similar incident at Charleston,² where British shipmasters, with a remarkable exhibition of bad taste, are said to have set the example, and the Americans followed it in a spirit of courtesy, supposing that intelligence had been received of the death of some important personage. Commercial men certainly believed that the act threatened the national shipping interest with extinction. They were almost as much surprised as they were dismayed to learn that the bill had weathered the fierce storms it had encountered on its way through Congress. There is abundant evidence that importers and others whose business might suffer injury from the operation of a highly protective tariff did not anticipate the passage of the bill.³ Nothing more conclusive on this

¹ Niles, vol. xxxiv. p. 201.

² *Ibid.* p. 249.

³ "It is a well-known fact that very few persons believed that the tariff act of 1828 would pass until they read its passage in the public prints of the day." The foregoing is an extract from a letter written by Mr. S. D. Bradford, of Boston, to the Committee of Ways and Means in February, 1832, printed in Executive Document No. 13, second session, Twenty-second Congress, copious extracts from which may be found in Niles, vol. xlv. p. 379. Previous tariff acts had fixed a time from four to eight months after approval by the President when they should become operative. The duties imposed by the act of 1828 went into effect on the 1st of July, only six weeks after the date of its enactment. The merchants whose goods in transit at the time of the passage of the act were charged with

point can be desired than the fact that importations were stimulated scarcely at all by an apprehension of an increase of duties. Mr. Bradford says further, in the letter quoted in the note, that the markets in 1828 were not overstocked; that the imports in the summer and autumn of that year "were not large by any means, nor upon an increased scale." The merchants simply had the usual cargoes upon the ocean, proceeding leisurely to their ports of destination.

In its operation the act of 1828 met neither the hopes of those who supported it as an ingenious device to work the ruin and overthrow of the protective system, nor the fears of those — whether free traders or protectionists, whether shipowners, importers, or manufacturers — who opposed it.

It did not result in a diminution of foreign commerce nor render idle American shipping engaged in that trade. Horace Greeley, in an article on the relation of the tariff to commerce, in the first volume of Hunt's "Merchants' Magazine,"¹ says, "Take the ten years when that policy [the protective] was predominant, from 1824 to 1834, and its friends may safely defy its opponents to show any ten successive years when commerce was so uniformly, generally and onwardly prosperous." Mr. Greeley was, it is true, a thoroughgoing partisan; but his challenge, issued soon after the close of the period referred to, was not taken up. His position is, moreover, supported by history and statistics. The tonnage of registered vessels

the higher duties, and who suffered loss thereby, as will presently be seen, urged upon Congress the justice of refunding the excess of duty. The matter was before the House of Representatives several years. The Committee of Ways and Means twice reported a bill for the relief of the merchants, but no redress was ever given them. The document quoted above was printed as containing the reasons of the committee for reporting the bill at the session of 1832-33. It is referred to again in the text. It should be mentioned that Mr. Bradford and the other merchants quoted were free traders and actively urgent for a repeal of all protective tariffs.

¹ Page 58.

engaged in the foreign trade increased from 639,931 tons in 1823 to 857,098 tons in 1834; and the total merchant marine, including coasting vessels, increased in the same period from 1,336,566 tons to 1,758,907 tons. So far as the importers were concerned, the act inflicted no apparent injury upon them; and although they claimed indemnification for losses resulting from the suddenness with which it took effect, even that feature was one which worked to their advantage. That they were generally prosperous during the years the act was in operation is proved by the increase of importations. It would have been exceedingly unfortunate for them if they had been allowed an interval of several months during which they might import goods at the rates levied by the act of 1824. To their surprise and consternation, the prices of the foreign merchandise which came in competition with the protected articles suffered a great and sudden fall quickly after the act was passed. On previous similar occasions they had imported largely pending the imposition of heavier duties, and after the new tariff became operative had been able to add the excess to the price. Doubtless they would have endeavored to make anticipatory importations in 1828 if time had been allowed them. Perhaps this circumstance had much influence in dissuading Congress from giving them the relief they asked for, even when the disposition of Congress toward merchants and shipowners became extremely favorable.

The fact that prices of goods declined greatly, according to the predictions of the protectionists and contrary to the expectations of the free traders, is highly important and deserves particular emphasis. It is stated several times by Mr. Bradford in the letter already cited. "Nearly every article on which the duty was raised on the 30th June," he says in one place, "rather declined than advanced in price." And again he remarks that "the doctrine of Mr. Niles was, for once, verified, that

laying a high duty often lowers the price of an article, and reducing the duty increases its value.”¹ Letters from Benjamin Rich & Son, and Windsor Fay, merchants of Boston, corroborate Mr. Bradford’s statement. An affidavit signed by eight mercantile firms of the same city declares that “upon the passage of said act many persons supposed that those manufactures on which the duty was increased would immediately rise in the market, and command prices proportionate to said increase of duty; and at the first view of the subject such would appear as the natural result. Such, however, was not the effect of the tariff of May, 1828; for instead of advancing most if not all of the principal articles of cotton, worsted, and woollen goods, on which the duty was increased, rather declined than improved in price after the passage of the tariff act of 1828, and would not in many cases bring so much in market as they had done the year previous under the old duty. . . . The undersigned could not undertake to decide what occasioned the decline in prices which occurred in 1828. It may have arisen from various and sundry causes, but they are decidedly of opinion it was not produced by an increased importation, occasioned by an expectation on the part of the American merchants that the tariff would pass; on the contrary, they have found no evidence that the importation of those articles in which they deal were upon an increased scale in that year, or greater, if so great, as usual; and they are of opinion that generally the passage of that act was a matter of great and sudden surprise to the great body of merchants themselves.” The value of these assertions as testimony, backed as they are by comparative quotations of the prices current of the same goods at different times, lies in the fact that all the persons named were strenuous opponents of the act of 1828 and of the

¹ Executive Document No. 13. Letter of S. D. Bradford, January 24, 1832.

protective system. It is not suggested by them, and it is not here put forth as an inference from the facts they presented, that the act caused the decline in the prices of protected articles. The theory of the protectionists — "the doctrine of Mr. Niles," as Mr. Bradford puts it — is travestied when it is represented as a contention that the mere passage of an act of protection lowers the price of the protected articles. The real significance of the decline in prices in 1828 lies in the evidence it affords that higher duties do not always, not even when the duties are placed extremely high, compel the consumer to pay more than before for the imported merchandise on which the duties are laid. And if he is not compelled to pay more for the foreign goods, he does not find the domestic articles which compete with them more costly. "Nothing can be more certain," said Mr. Bradford, "than that the extra duty laid in 1828 came, nearly all of it, out of the pockets of the importers."

So far as the manufacturers were concerned, the act proved far more workable and favorable than they had anticipated. It was passed, as we have seen, avowedly in the interest of the woollen manufacturers; but before they had tested it they regarded it as delusive and unsatisfactory. In fact, all branches of manufacture flourished famously under its operation. Inasmuch as commerce was prosperous; since the increased mechanical industry gave full employment to labor at good wages; since the price of merchandise, and consequently the cost of living, was low; it follows as a matter of course that trade was active and profitable, and that prosperity was general and as near universal as it ever is or can be. It might not be difficult, by giving a cumulative effect to the occasional complaints with reference to the condition of particular industries, which may be found scattered through the public journals of the time, pertaining to different years of the period during which the act was in force, and to

different parts of the country, to create an impression that trade was languishing and that hard times prevailed. Nevertheless, the evidence to the contrary is overwhelming in amount and in weight of authority. It exists in the casual paragraphs in the newspapers, chronicling the establishment of new industries and the prosperity of old ones; in the exulting challenges of the protectionists to the free traders to justify their predictions that the adoption of the restrictive policy would injure other interests as much as, or more than, it benefited manufacturers; in the eagerness of free traders to explain the existing prosperity, which they did not deny, without attributing any of it to the protective policy; in the retrospective views taken by the protectionists when the necessity of modifying the extreme protection contained in the act of 1828 was reluctantly admitted by them.

The preponderance of strictly contemporaneous evidence that the country prospered greatly under the tariff of 1828 could be established only by bringing all the evidence on both sides of the proposition before the reader; which is manifestly impossible. Nor is it necessary. Read the opening sentences of the President's annual messages. "The pleasure I have in congratulating you upon your return to your constitutional duties is much heightened by the satisfaction which the condition of our beloved country at this period justly inspires."¹ "Frequently and justly as you have been called on to be grateful for the bounties of Providence, at few periods have they been more abundantly or extensively bestowed than at the present; rarely if ever have we had greater reason to congratulate each other on the continued and increasing prosperity of our beloved country."² "Our country presents on every side marks of prosperity and happiness unequalled perhaps in any other portion of the world."³

¹ Message of December 7, 1831.

² Message of December 6, 1832.

³ Message of December 4, 1833.

Consider, too, the uncontradicted summary of the condition of the country presented by Mr. Clay, in supporting his tariff resolution, in his great speech of February 2, 1832. The senator referred to the dismal picture of the situation he had drawn eight years before,¹ and continued as follows:—

I have now to perform the more pleasing task of exhibiting an imperfect sketch of the existing state, of the unparalleled prosperity of the country. On a general survey we behold cultivation extended, the arts flourishing, the face of the country improved, our people fully and profitably employed, and the public countenance exhibiting tranquillity, contentment and happiness. And if we descend into particulars we have the agreeable contemplation of a people out of debt; land slowly rising in value, but in a secure and salutary degree; a ready though not extravagant market for all the surplus productions of our industry; innumerable flocks and herds browsing on ten thousand hills and plains covered with rich and verdant grasses; our cities expanded and whole villages springing up as it were by enchantment; our exports and imports increased and increasing; our tonnage, foreign and coastwise, swelling and fully occupied; the rivers of our interior animated by the perpetual thunder and lightning of countless steamboats; the currency sound and abundant; the public debt of two wars nearly redeemed; and, to crown all, the public treasury overflowing, embarrassing Congress, not to find subjects of taxation, but to select the objects which shall be liberated from the impost. If the term of seven years were to be selected of the greatest prosperity which this people have enjoyed since the establishment of their present Constitution, it would be exactly that period of seven years which followed the passage of the tariff of 1824.²

No senator, save Mr. Hayne and one or two others representing Southern States, disputed the full accuracy

¹ See page 207.

² "Register of Debates," vol. viii. part ii. p. 258.

of Mr. Clay's statement; and their dissent applied exclusively to the South, which did not, and under the system of slavery could not, take advantage of the tariff. But that the West as well as the East was prosperous is fully admitted in Mr. Benton's speech on the 15th of March, the same year. "The fine effects," he said, "of the high tariff upon the prosperity of the West have been celebrated on this floor; with how much reason let the facts respond and the people judge. I do not think we are indebted to the high tariff for our fertile lands and our navigable rivers; and I am certain we are indebted to these blessings for the prosperity we enjoy."¹ That they had possessed these blessings before the full adoption of the protective system, and yet had not then been prosperous, creates at least a presumption that the prosperity of the East, induced by the establishment of manufactures, enlarged the market for their surplus productions, and thus made more valuable their fertile lands and increased the usefulness of their navigable rivers.

Should the positive and negative testimony as to the prevailing prosperity at this time be rejected, it seems fair to urge that, on free trade theories, the fact is established; since, although the tariff was more restrictive than any earlier one, there was a large increase of foreign importations during the period. A still further and an undeniable proof is to be found in the circumstance that during these years the means were accumulated for the extraordinary speculation that culminated in the commercial and financial crisis of 1837.

To establish the fact that under the act of 1828 the country grew wonderfully in wealth, in diversification and expansion of industries, and in trade activity, is by no means to prove that the general prosperity was caused by the tariff. Indeed no one ever did, and no sensible person could, assert that it was caused solely by the tariff.

¹ "Register of Debates," vol. viii. part i. p. 573.

But he is an inattentive or a careless student of the public sentiment of that time who does not perceive that a vast majority of the people were convinced that the tariff had been the chief agent in dispelling the clouds and permitting the sunshine of prosperity to vivify the land. Theoretical free trade was never less influential in this country than it was at the moment when men had the best of opportunities to contrast their situation under a high and under a low tariff. When the act of 1828 was first passed, the discussion was quite active, and it proceeded along the lines of argument which show the free trader at his best, — the argument postulated upon the assumption that each individual of our fallen human race will do that which it is his highest interest to do. But the debate soon took a turn. The hopes and predictions of the protectionists were verified by the establishment of lower prices throughout the list of protected articles — woollen and cotton goods, iron, glass, molasses, sugar, salt. Their opponents maintained that the cause of the decline was quite independent of the tariff; the protectionists pointed triumphantly to the fact that there was no case of adequate protection given to any article of production that was not followed by a lower price of the commodity. They attributed the decline to the domestic competition brought about by absolute possession of the home market. They had foretold the result; to secure it had been one of the chief inducements they held out to the people to adopt the protective policy.

The reply to this was that the foreign prices of the same articles had fallen likewise; whereupon the protectionists, admitting the fact, retorted that that was a natural consequence of the increased competition abroad that ensued from the partial exclusion of foreigners from the American market. But, it was again urged, other merchandise has declined in price quite as much as have the protected articles. This also was admitted, — save with respect to

agricultural productions, which were higher, to the benefit of the farmer, — and the result was ascribed to the stimulus sympathetically imparted to all branches of industry, to the economy effected by enlarged transactions, and to the encouragement of invention of labor-saving machinery.

Either because the logic of passing events was more regarded than the deductions of political economy, or from some other cause, the academic discussion of the tariff question had ceased almost wholly, before the crisis of South Carolina nullification. Of political free trade there was enough and to spare. And here, as in the struggle for the predominance of the slave power, South Carolina was the leader. Complaints that the tariff was oppressive to the South came loudly and constantly from Charleston; they were echoed but feebly from other centres of Southern thought; they were declared groundless by some public men of the section. Nevertheless, throughout that part of the country the tariff war was recognized as one between the free and the slave systems of labor; and the necessity of standing by South Carolina in its opposition to protection, if not in its nullifying method of opposition, brought the South almost as a whole into agreement on the main question. It is probably true that the preference of the North for its own industrial system had an influence in unifying public sentiment there also. Be that as it may, whatever influence it had was exerted for the most part silently. Those who were most earnest and outspoken in opposition to slavery were regarded even at home as mischievous agitators; and an attempt to promote the tariff cause by representing that protection would hasten the overthrow of slavery would have alienated rather than attracted supporters. Occasionally and incidentally a contrast was presented, in congressional speeches, between the two labor systems, as explaining why the South obtained little or no direct benefit from measures which might give

wealth and prosperity to the whole country. Remarks upon that subject always drew from Southern leaders a rebuke in terms which implied that attacks upon the "peculiar institution" must cease if the slave States were to continue in the Union.

The foregoing general survey of the condition of the country and the state of public opinion prepares the way for a more particular consideration of the events and movements which led to the passage of the acts of 1832 and 1833, which were designed, each in its own way, to save the protective policy from destruction, the first to buttress the system by ameliorating all duties save those on protected articles, the other to postpone as long as possible the adoption of a strictly revenue policy, which the political tendencies of the times seemed to render inevitable. We shall see that the first of these measures escaped from the control of those who planned it, and by rendering evident the political strength of the opponents of protection drove the advocates of the policy to a defence which differed little from a surrender.

The anti-tariff men lost no opportunity for attack. Mr. Weems, of Maryland, introduced a resolution in the House of Representatives at the beginning of the second session of the Twentieth Congress, December 9, 1828, virtually asserting the unconstitutionality of the existing tariff, and directing the Committee of Ways and Means to report a tariff bill compatible with the power to regulate commerce. The resolution met with little favor. The yeas and nays were called on the question of consideration, which was refused, 122 to 81.

At the beginning of the first session of the Twenty-first Congress, in December, 1829, the situation was similar to that which existed two years previously, so far as the political composition of the House of Representatives was concerned. There was a Democratic majority; and the South was in control by favor of Northern allies; but

there was a disinclination to abandon the protective policy. Mr. Stevenson, of Virginia, was chosen Speaker. He constituted a free trade Committee of Ways and Means and a protective Committee on Manufactures. The President in his annual message referred to the tariff at some length. He said that the law of 1828 had not proved so injurious to commerce and agriculture as had been apprehended, nor so beneficial to manufactures as had been hoped. It was to be regretted that the complicated restrictions upon the free commerce between nations could not be abolished by common consent; but since we must always expect the legislation of nations to be selfish, we must adapt our own to their regulations. "The general rule to be applied in graduating the duties upon articles of foreign growth or manufacture is that which will place our own in fair competition with those of other countries; and the inducements to advance even a step beyond this point are controlling in regard to those articles which are of prime necessity in case of war." The doctrine of the President at this time was, then, that the tariff should be so arranged, irrespective of revenue considerations, as to place all domestic productions on terms of even competition with those of foreign nations, and that it was justifiable and even imperative to go beyond this and give a distinct advantage to the home producers of articles of prime necessity in case of war.

The President, proceeding, deprecated the prevalence of local feelings and prejudices. "All attempts to connect them with the party conflicts of the day are necessarily injurious, and should be discountenanced." The agricultural interests of the country he declared to be superior to all others. "It is principally as manufactures and commerce tend to increase the value of agricultural productions and to extend their application to the wants and comforts of society that they deserve the fostering care of government." Having regard to the early extinc-

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tion of the public debt, he said that "the duties on those articles which cannot come in competition with our own productions are the first which should engage the attention of Congress in the modification of the tariff;" and he recommended specifically a reduction of the duties on tea and coffee.

Another extremely significant passage in the message of 1829 is as follows: "After the extinction of the public debt it is not probable that any adjustment of the tariff upon principles satisfactory to the people of the Union will until a remote period, if ever, leave the government without a considerable surplus in the treasury beyond what may be required for its current service." He therefore thought that the consideration of the method of disposing of the surplus should begin at once, and recommended an amendment of the Constitution to authorize the distribution of the surplus revenue among the States. In other words, he anticipated that the people would continue to insist upon a tariff that would yield far more revenue than was needed, in order to protect manufactures, and so far was he from regarding as unconstitutional a tariff for other purposes than revenue, that he advised a change in the Constitution to provide for the permanence of the policy by opening a sluiceway for the discharge of the excessive revenue.

It will be seen that the President was still in favor of a protective tariff, and still believed it to be both expedient and necessary to maintain the restrictive policy. The rule which he proposed in determining upon a plan of reduction was identically that which Mr. Clay adopted, and which the most active and consistent protectionists advocated two years later.

There was a contest in the House of Representatives over the reference of that part of the President's message relating to the tariff. It was decided in favor of the Committee on Manufactures — a distinct triumph for the

protectionists. Mr. Mallary, chairman of the committee, reported on January 5, 1830, adversely to any change of the tariff. The report is noteworthy for its strong and plain-spoken contention that the protective policy had been adopted definitely as the permanent policy of the country, and that although an attempt to modify the tariff might not endanger the system, it would lead to a general discussion and an unnecessary disturbance of business interests throughout the country. The committee promised to bring in a bill to deal with the matter of frauds in the valuation of imported goods, and to remedy the evil caused by the construction, believed to be erroneous, placed by the Secretary of the Treasury upon a clause of the act of 1828 relative to the duty on woollen goods.

The free traders did not intend that their plans should be balked by an adverse report. The Finance Committee of the Senate reported a bill on January 25, 1830, reducing duties generally; and Mr. McDuffie reported to the House on February 5 a bill from the Committee of Ways and Means. The Senate bill was never discussed. A motion was made to reject Mr. McDuffie's bill upon its first reading, and after a short debate the motion was carried, 107 to 79. Meantime, on the 27th of January, Mr. Mallary reported from the Committee on Manufactures a bill intended to put a stop to fraudulent invoices of imported woollen goods. It was not taken up for consideration until the 15th of April, and even then, after an explanatory speech by Mr. Mallary, it went over until the 26th, when Mr. McDuffie offered as a substitute a bill reducing the duties on protected articles, almost throughout the list, to the rates imposed by the act of 1816.

Thereupon ensued one of the most tedious and fruitless debates in the history of Congress. Day after day the members on both sides of the question delivered set speeches on the tariff, of interminable length and quite devoid of fresh arguments and novel illustrations. On

the 11th of May Mr. McDuffie's amendment was rejected by the Committee of the Whole, by a vote of 62 to 112. Mr. Buchanan then offered a substitute which had been prepared by the Secretary of the Treasury and Mr. Mallary, which was adopted without a division. Two further amendments were agreed to, the one making the duty upon all manufactured iron the same as that upon bar iron, the other granting a drawback upon imported iron used in the construction of railroads.¹ The bill was then reported to the House. Mr. McDuffie immediately renewed his amendment, in three sections. The first, restoring the duties of 1816 upon manufactures of wool, was rejected, 68 to 120. The second, reducing the duties upon iron, hemp, flax, cotton goods, molasses, and other articles to the 1816 scale, was rejected without a division. The third section, fixing the duty on salt at fifteen cents a bushel, to be further reduced to ten cents after the year 1831, was agreed to, 105 to 83.

This last vote was a disappointment to the New York members and to most of the protectionists. Their opponents had long before discovered that salt was the weak point in their line of defence. Mr. Benton had made many an attack upon the duty laid on "alum salt." He and others maintained that the salt obtained by evaporating the saline water of salt wells was unfit for preserving meats, and held that the salt derived from sea water, all of which was imported, must be used in preparing the Western provisions for the market. The duty therefore was represented as a burden on the Western States, which magnified their grievance by reason of the fact that the fisheries had almost always been favored either by a drawback upon the salt used in curing their fish, or by a bounty on the tonnage employed in their business. The protectionists defended the duty by the usual arguments: that it had resulted in domestic competition which had reduced


¹ The drawback was the duty paid in excess of 25 per cent.

the price of the article largely ; that previous experiments in removing the duty had been followed by an advance in the price ; that large sums of money were invested in the industry ; that it was as clearly entitled, on general principles, to protection as any other manufacture ; and that in the whole range of articles necessary in time of war not one fell more strictly in that category than salt.

Some of the Eastern protectionists showed a disposition to retaliate upon certain Pennsylvania members who had voted to withdraw protection from the salt industry, by reconsidering the rejection of the other two sections of Mr. McDuffie's amendment and reopening the whole subject. There were also certain members who were frankly against the protective system, but who were equally opposed to a new agitation of the tariff question. A great struggle took place among the several factions upon a motion to reconsider the reduction of the salt duty. The motion was carried by the close vote of 102 to 97 ; and after further debate the amendment was rejected by four majority. There was really but little opposition to the bill itself, which was passed on the 13th of May by a vote of 127 to 40. The opponents were nearly all Southern men. Even Mr. Cambreleng voted for the measure. In the Senate the bill was received on May 13 ; referred to the Committee on Commerce ; reported on the 17th ; amended and passed on the 18th, yeas 28, nays 14. The negative vote was exclusively Southern ; but four or five Southern senators voted in the affirmative. The President approved the act on the 28th of May. Save for the provisions already mentioned, regulating the iron duties and granting a drawback upon railroad iron upon satisfactory proof that it had been used for that purpose, it made no change in the tariff, but was a purely administrative measure.

There was, nevertheless, tariff legislation of an important character at this session of Congress. The President's

recommendation of a reduction of the tea and coffee duties was carried out. These duties remained unchanged from 1816 to 1830. The reduction now made upon tea was fifty per cent. in most cases, and upon some kinds more than that. The coffee duty was reduced from five cents a pound to two cents, which was to be the rate during the year 1831, and after that year one cent a pound. Cocoa was reduced from two cents to one cent a pound. The act making these changes passed Congress practically without opposition; but there were several determined attempts in both branches to add to the bill a reduction of the salt duty. Upon the failure of these attempts the Committee of Ways and Means brought in a bill — on May 18 — to reduce the duty on salt¹ to fifteen cents a bushel during the year 1831, and after that year to ten cents a bushel. This proposition came before the House when the time for final adjournment had already been set. Test votes had proved repeatedly that Congress was closely divided upon the question. In later times the opponents of the measure would have defeated it easily by filibustering tactics. They made no effort to do so, but allowed the bill to come to a vote at once. A motion to reject it was defeated, 85 to 103; it was ordered to a third reading by a vote of 103 to 88; and passed, 105 to 83. There was a short struggle over the bill in the Senate; all amendments proposed were rejected, and less than twenty-four hours after it was received from the House of Representatives it was passed, by a vote of yeas 24, nays 15. An act to reduce the duty on molasses from ten cents a gallon to five cents was also passed quickly, and met with scarcely any opposition. The higher duty, it will be recalled, was one of the most odious features of the act of 1828. The act of 1830 reducing the rate also restored the drawback upon spirits distilled from foreign molasses, which the act of 1828 had abolished.



¹ The rate had been 20 cents per bushel of 56 pounds since 1813.

The tariff question did not reappear in the Twenty-first Congress in a threatening form, but the agitation throughout the country grew in intensity and bitterness. The excitement was much greater in the South than in the North. The Southern people, led by skilful and far-seeing politicians, made more and more of the grievance of a policy which admittedly did not help them — because they made no use of it — and which they asserted did them constant and serious injury. The protectionists of the North yielded nothing. They refused to admit that the tariff was harmful or oppressive to any part of the country ; they refused to consider concessions to the South in the face of threats the execution of which they neither expected nor feared. There were a few active free traders in the Northern States, men of principle and conviction, who opposed the tariff because they regarded it as economically wasteful, and as effecting merely a transfer of wealth, not as tending to increase wealth. They would have had but little influence if the political and financial condition of the country had not brought to their aid two other classes of men — petty politicians who are ever ready to ally themselves with those whom they select as the victors in future party conflicts ; and conservative men who deemed unnecessary and dangerous a policy which furnished a national revenue greatly in excess of the needs of the government.

General Jackson was now the undisputed master of his party, and the leader of a body of followers entirely subservient to his will. He had been supported in the North as a stanch tariff man, more earnest in the cause of protection than Mr. Adams ; in the South he was held up as a liberal on the question. Hitherto his public utterances had been favorable to the protective policy ; yet his choice of phrases and the use of qualifying words gave him an opening for a retreat to the other side if a change of position should seem expedient. Those who were watching for his

nod shrewdly detected signs that ultimately he would be found with the opponents of the tariff. The most conspicuous of these signs was that his particular friends, North and South, were there already, either openly or covertly, either arguing manfully against the whole "American system" or giving it a left-handed support. It was an expectation that in a short time the whole Democratic party would be ranged alongside its Southern wing in a campaign to break down protection, rather than conscientious conviction, that accounts for many changes of front on the part of local politicians and country editors at this time.

The other cause of a change of public sentiment deserves more particular examination. It compelled the attention of thoughtful men, because it rendered necessary a new national revenue policy. Moreover, it furnished an avowable reason for men who needed an excuse for shifting their position on the tariff question. At the beginning of the year 1816 the public debt amounted to \$127,334,934. By the first of January, 1820, it had been reduced to \$91,015,560. Then for four years — a period, it will be noticed, when the tariff was extremely unsatisfactory to manufacturers — it remained almost stationary. On January 1, 1824, it was \$90,269,778. Under the operation of the tariff of 1824 it was reduced to \$67,475,044 at the beginning of 1828. Some of the important facts of that and the five ensuing years are exhibited in the following tables. They show the opportunity which the times afforded to the opponents of the tariff.

	Public Debt.	Paid Previous Year.	Interest Previous Year.
Jan. 1, 1828	\$67,475,044	\$6,517,597	\$3,975,543
1829	58,421,414	9,064,637	3,486,072
1830	48,565,407	9,860,305	3,098,801
1831	39,123,192	9,443,173	2,542,843
1832	24,322,235	14,800,629	1,912,575
1833	7,001,699	17,067,747	1,373,749

	Imports (year ending Sept. 30).		Customs	Rate of
	Free.	Dutiable.	Receipts.	Duty per cent. dutiable.
1828	\$4,889,435	\$76,130,648	\$23,205,534	39.36
1829	4,401,889	62,687,026	22,681,966	44.30
1830	4,590,281	56,130,675	21,922,391	48.88
1831	6,150,680	89,734,499	24,224,442	40.81
1832	8,341,949	86,779,813	28,486,237	33.83
1833	25,377,582	75,670,361	29,032,508	31.96

It will be seen upon a study of these tables that the importations increased largely under the protective system, as they have done under other protective tariffs even to the present time. In fact, importations always increase in times of prosperity, whatever the tariff system may be. The people have more money to spend and their purchases increase over the whole range of articles of use, necessity, convenience, and luxury. Nor is such increase, so far as it relates to imported goods, incompatible with the success of the protective policy nor contradictory of the principles on which the protective theory rests. In the period under review the augmentation of the foreign trade was coincident with a season of unusual activity and profitableness for the protected manufactures. The revenue was largely in excess of the current expenditures; the debt melted away. At the beginning of 1832 there remained obligations of the government almost exactly equal to the payments during the two years preceding. It became therefore a question of practical finance whether the government should retain the existing revenue system and adopt some new plan for disposing of the surplus after the public debt should be extinguished, or should reduce the revenue; and if the second alternative were chosen, what principle of reduction was to be preferred.

The problem was virtually restricted to the treatment of the tariff, which yielded all the revenue derived from taxation.¹ There was a strong movement among protectionists

¹ In 1831 the net ordinary receipts were \$28,526,821; of which from

to maintain the surplus and devote it to internal improvements. Already there was, also, not a little agitation of the proposition which was adopted some years later, to distribute the surplus among the States; and many of those who advocated this measure were suspected of opposing a general reduction of the tariff in order that there might be a surplus to be distributed. The wiser statesmen of the time opposed a maintenance of the revenue at a point much in excess of ordinary national expenditure, for either purpose, as a policy full of danger.

At the beginning of the Twenty-second Congress, in December, 1831, a revision of the tariff was generally expected and quite as generally desired,—by the opponents of protection in order to destroy the system, by its advocates in order to preserve it. Mr. Stevenson, of Virginia, was again chosen Speaker. He constituted the Committee of Ways and Means as usual with a majority in favor of free trade; a Committee on Manufactures, consisting of eight members, evenly divided between protectionists and free traders, with Mr. John Quincy Adams as chairman. The President's references to the tariff in his annual message were somewhat oracular:—

The confidence with which the extinguishment of the public debt may be anticipated presents an opportunity for carrying into effect more fully the policy in relation to import duties which has been recommended in my former messages. A modification of the tariff which shall produce a reduction of our revenue to the wants of the government and an adjustment of the duties on imports with a view to equal justice in relation to all our national interests and to the counteraction of foreign policy as far as it may be injurious to those interests, is deemed to be one of the principal objects which demand the consideration of the present Congress. Justice to the interests of the merchant as well as the manufacturer

customs, \$24,224,442; from sales of public lands, \$3,210,815; dividends on United States Bank stock, \$490,000; all other receipts, \$610,564.

X requires that material reductions in the import duties be prospective; and unless the present Congress shall dispose of the subject the proposed reductions cannot properly be made to take effect at the period when the necessity for the revenue arising from the present rates shall cease. It is therefore desirable that arrangements be adopted at your present session to relieve the people from unnecessary taxation after the extinguishment of the public debt. In the exercise of that spirit of concession and conciliation which has distinguished the friends of our Union in all great emergencies, it is believed that this object may be effected without injury to any national interest.

The House of Representatives adopted the singular course of referring to the Committee of Ways and Means so much of the President's message as related to "relieving the people from unnecessary taxation after the extinguishment of the public debt;" and to the Committee on Manufactures so much as related to "manufactures and a modification of the tariff." The same subject was thus referred to two committees, always rivals. The consequence of this inconsistent action will appear presently.

Henry Clay made his reappearance in the Senate at this session and quickly assumed leadership of the protectionist forces. On the 9th of January, 1832, he introduced the following resolution: —

Resolved, That the existing duties upon articles imported from foreign countries, and not coming in competition with similar articles made or produced in the United States, ought to be forthwith abolished, except the duties upon wines and silks, and that they ought to be reduced; and that the Committee on Finance be instructed to report a bill accordingly.

Two days later, Mr. Clay made a careful statement of the reasons which actuated him in making the proposition. Declining to discuss the policy of protection, as being wholly unnecessary, he took a survey of the financial

condition of the government; urged that the continued collection of a surplus to be subsequently distributed among the States would be unwise if not unconstitutional; and was thus brought to the conclusion that the revenue must be reduced by a modification of the tariff. There were, he said, several modes of effecting the reduction, of which he would mention three only: (1) a reduction of duties on all articles in the same ratio, without regard to the principle of protection; (2) to retain them on unprotected articles and augment them on the protected articles; and (3) to abolish and reduce the duties on unprotected articles, retaining and enforcing the faithful collection of those on the protected articles. The first of these plans would destroy the home manufactures; the second would be more offensive to the opponents of the tariff than the existing system; the third was the most equitable and reasonable. The last proposition he argued at length, maintaining that his plan involved no sacrifice of principle by either friend or opponent of the American system, and concluded with an eloquent assertion of his strong desire to restore harmony and unity to the country, and of his firm belief that his measure would accomplish that end.

Mr. Hayne led in opposition to Mr. Clay's plan. He proposed the following as a substitute for Clay's resolution:—

Resolved, That the existing duties upon articles imported from foreign countries should be so reduced that the amount of the public revenue shall be sufficient to defray the expenses of government according to their present scale after the payment of the public debt; and that, allowing a reasonable time for the gradual reduction of the present high duties on the articles coming into competition with similar articles made or produced in the United States, the duties be ultimately equalized so that the duty on no article shall, as compared with the value of that article, vary materially from the general average.

Upon this resolution Mr. Hayne based a speech of great length, consisting for the most part of arguments which previous debate had worn threadbare; but he made one point of great pertinence, one which the ingenuity of all the protectionist orators could not overcome, namely, that Mr. Clay's plan disposed of only six millions of the surplus revenue, a half only of the excess which would remain above expenditures each year after the public debt should be paid. Mr. Hayne's plan was, nevertheless, even more than Mr. Clay's, open to that objection, since the gradual "horizontal" reduction of duties which he proposed would surely cause an increase rather than a reduction of revenue. This objection was pressed by the protectionists, but there was no answer to it. Mr. Hayne was followed by other senators, some favoring and some opposing Mr. Clay's plan. Clay himself was impelled to change his purpose not to discuss protection, and delivered a three days' speech which has been ranked as his greatest and most comprehensive utterance on the question. Nevertheless, it contained little that he had not at one time or another said already.¹ The most interesting speech of the whole debate, freshest in ideas and evincing the most careful study in preparation, was that of Mr. Holmes, of Maine. Among other things it contains a fuller citation of authorities, a more thorough examination of the constitutional question, from a protectionist point of view, and a more intelligent handling of statistics than can be found in any speech in Congress up to that time.²

Even a tariff debate may sometimes yield the material for a smile. Mr. Clay, in discussing the effect of duties on prices, argued that a reduction of duty would not be followed by a reduction of price. "Let us appeal to experience. In May, 1830, the duty on salt was lowered,

¹ A passage from the speech has been given at p. 355.

² "Register of Debates," vol. viii. part i. p. 194.

and the price after reduction was higher than it was before, and it is now higher in some places than it had been for ten or fifteen years." ¹ To which a quick-witted free trader might have retorted that if the fact were pertinent at all, if the reduction of duty and the advance of price were cause and effect, the lower duty was a more effective protection of the domestic manufacturer than the higher duty. But Mr. Benton, who replied to Mr. Clay, was also maladroit in his explanation that the price of salt rose after the reduction of the duty upon it because the importation was diminished, forgetful that he had previously contended that the duty diminished importation. He added, apropos of nothing, that when, in 1828, the duty on lead was raised to three cents a pound, the price of lead at Mississippi River points fell to one and a half cents a pound, — thus presenting an illustration of the operation of the tariff for which the friends of the "American system" should have given him a vote of thanks.

The long-drawn-out debate seemed to come to an end on the 19th of March, when Mr. Hayne's amendment was rejected by a vote of 18 to 23; but it was renewed upon a fresh proposition two days later, and was continued fitfully until June, when the House tariff bill was submitted to the Senate for concurrence. It would be useless and perhaps confusing to give the parliamentary history of the spring months of 1832 in detail. Since all the tariff votes in the Senate before the month of June were superseded by the subsequent action upon the House bill, it will be sufficient to say that Mr. Clay's resolution, overloaded with other matters, including a proposition to reduce the price of public land, was referred to the Committee on Manufactures, which reported two tariff bills intended to be mutually supplementary; and that neither of the bills came to a vote. It is an interesting fact that at this time the Senate construed the constitutional provision relating

¹ "Register of Debates," vol. viii. part i. p. 40.

to revenue bills¹ as not precluding the Senate from originating bills to reduce revenue. This quibble was long ago abandoned by the Senate.

Meantime the House of Representatives also had been feverishly agitated over the tariff question. The Committee of Ways and Means forestalled the Committee on Manufactures by making, through Mr. McDuffie, on February 8, 1832, a long and carefully written report, containing a broad argument against the principle of protection and arraigning the manufacturers who demanded it as actuated by selfishness only.² The report concluded with the following sweeping condemnation of the system: "Upon the whole, then, the protecting system is utterly ruinous to the planting States, injurious to the Western States, and exclusively beneficial to the manufacturing States, and ought to be abandoned with all convenient and practicable despatch, upon every principle of justice, patriotism, and sound policy."

The bill reported by the committee was brief but radical in its provisions. It proposed to reduce the duty on all protected articles to 25 per cent. for one year, to 18 $\frac{3}{4}$ per cent. for another year, and after that to 12 $\frac{1}{2}$ per cent.; and to fix the duty at once at 12 $\frac{1}{2}$ per cent. on all other articles save those already charged with a lower rate or admitted duty free. Two members of the committee presented a minority report taking diametrically opposite ground, and arguing in favor of the protecting system as earnestly as Mr. McDuffie opposed it. It may or may not have been intentional that in beginning the

¹ "All bills for raising revenue shall originate in the House of Representatives" (Constitution, art. i. sec. vii.).

² "Can there be a more extraordinary instance of the power of self-interest to delude the human understanding and deaden the sense of justice in the human heart than that which will be doubtless exhibited, of the entire class of manufacturers clamoring against a system of taxation not because the taxes are too high, but because they are not high enough!" (Extract from the Report; Niles, vol. xlii. p. 135.)

summing up of their conclusions the dissenting members used the same phrase as that employed by the majority: "Upon the whole, then, the minority are decidedly of opinion that the protecting system is interwoven with the best interests of the country."

Before the bill of the Committee of Ways and Means was taken up for consideration, there was another report and another bill, from the Committee on Manufactures. Mr. Adams explained that the bill was based upon a report and a bill emanating from the Secretary of the Treasury, in response to a resolution of the House of Representatives,¹ but differed from the Treasury bill in some of its details. It was said in the "Globe," the organ of the administration, when the report of Mr. Secretary McLane was made public, that the proposed modification of the tariff was "predicated on the salutary principles avowed by our venerable President and in the patriotic spirit of reconciliation recommended by him." The protectionists could find no words that would adequately express their opposition to the bill and their feeling that by it the manufactures so carefully fostered would be left to their fate. The evidence that this was the President's idea of a "judicious" tariff left the advocates of protection no room to doubt that they now had to regard him as an open enemy. On the other hand, it was the awaited signal to the President's followers that henceforth the pretence of adhesion to the American system might be abandoned.

The report which accompanied Mr. Adams's bill is at this point more interesting than the bill itself. The former President stated explicitly that it was an expression of his views only. Different members of the committee, he said, approved different parts of it, but no member approved the whole of it except the reporter

¹ The resolution was passed January 19, 1832, and the report is dated April 27.

willingly, ideas which they refused to consider. But Mr. Adams, like his father, would prophesy, whether men would hear or whether they would forbear, and the distastefulness of his message to his generation and the consequent unpopularity of the prophet did not even suggest to him that he should be silent or prophesy falsely.

Mr. McDuffie called up his bill on the 28th of May and made a prodigiously long speech in favor of it. After other long speeches the House voted to strike out the enacting clause, — 81 to 41, — and took up the bill reported by the Committee on Manufactures. The manufacturers of the country and protectionists generally liked this bill not much better than the Treasury bill, or even than Mr. McDuffie's bill. By it the whole system of minimums in the woollen schedule was abandoned, a step which the manufacturers believed would completely destroy the industry. Moreover, the rate of duty was to be cut down; although the manufacturers were to have partial compensation for the reduction in the admission of coarse wool free of duty.

Mr. Stewart, of Pennsylvania, offered a substitute for the Adams bill, based upon the principle of Mr. Clay's resolution in the Senate, and indeed almost identical with the bill reported in that branch in accordance with the resolution. In attacking the committee's bill, he maintained and proved conclusively that it would not reduce the revenue, although to reduce it was the sole reason for modifying the tariff. He called attention to the fact that under the high duties of the act of 1828 the value of the importations of woollen goods increased from five millions in 1830 to thirteen millions in 1831; of cotton goods, from seven to sixteen millions; of iron and its manufactures, from five to seven millions; of wool, from 667,000 pounds to 5,662,000 pounds. Surely, if the duty on these classes of goods were reduced moderately the importations and the revenue would increase. But this seemed to Mr. Stewart

the least evil that would be produced by the bill. It would put the knife to the jugular of every sheep in the land and would devote to destruction the whole woollen business of the country. "Quit work, buy everything, sell nothing, and grow rich; this was the glorious plan recommended." The speech of Mr. Stewart shows how angry and despondent the protectionists were at the prospect before them, from which they saw no escape now that the Committee on Manufactures deserted them at what was then and had long been the critical point of the whole field of battle.¹

Mr. Adams explained at some length the difference between his own bill and that of Mr. Stewart. He went into the question of "minimums" and told the House something which probably every member knew before he was told, that under the law as it stood, a woollen fabric costing one dollar and one cent a yard was valued at the custom houses at two dollars and a half a yard and paid forty-five per cent. on that valuation.² He also made the astonishingly naïve remark that since the bill had been reported much evidence had been received that the manufacturers desired the retention of the minimums — a fact of which the committee had not been aware. Yet during the whole of Mr. Adams's own administration, when it seems impossible that he should have been ignorant of the course of tariff debates, the chief bone of contention had been the establishment of these same minimums.

The debate was prolonged until June 16 before an important vote was taken. As had been the case in the Senate, it consisted for the most part of long set speeches

¹ Mr. Davis, of Massachusetts, expressed the feelings of the protectionists when he exclaimed, "Shall we abandon a policy which has literally fed the hungry and clothed the naked — which has made a poor people rich and a weak people strong?" ("Register of Debates," p. 3306.)

² Mr. Stewart's bill proposed to discontinue the one dollar minimum and to rate all woollen goods costing more than fifty cents a yard at two dollars and a half a yard.

interspersed now and again with brief colloquies.¹ The reporter records at the close of the proceedings on one day that the House adjourned after a laborious sitting of eleven hours. As the discussion proceeded, it became evident that the protectionists must accept what they could secure, and that they could not obtain all that they desired. Although they were sure, and the most prejudiced historian cannot deny that they were right, that a large majority of the people of the land were on their side and believed that the protective system had been highly beneficial to the country and could not be destroyed without inflicting serious injury upon many interests, yet they were unable to resist the pressure which was exerted in favor of withdrawing the most of the government support of the manufacturing industries. Many things worked against them. The Southern opposition was always persistent and aggressive. To it was joined the help of a certain number of politicians who relied upon an alliance with the Southern wing of the party to advance their own fortunes. It is as difficult as it is unnecessary to draw a line between this last class and that of the men who, from timidity, patriotism, or a desire for national harmony, were disposed to yield to the South as much as they could without imperilling the prosperity of the country. There were also the sincere and consistent free traders, who would have adhered to their position although opposed by both North and South. All these classes were fortified in their resolution to reduce the tariff upon protected articles, by the fiscal condition which rendered a reduction of the revenue the most obvious of duties. The only member whose position it is difficult to understand was John Quincy Adams, and he stood in a class by himself.

¹ The interest taken in these speeches may be inferred from a remark made by Mr. Clayton, of Georgia, that they were made for the most part to empty benches, and that the chairman of the Committee of the Whole had been compelled five times to report to the House the lack of a quorum ("Register of Debates," p. 3530). Mr. Clayton then proceeded himself to make a speech which covers eighteen closely printed pages.

The action of the House upon the bill shows that a considerable number of moderate men were inclined to regard the measure reported by Mr. Adams as a fair compromise, and to resist material change in it either in a protectionist or in a free trade sense. Few amendments were adopted; those which were successful indicate beyond question that the House was not at heart hostile to protection nor disposed wholly to abandon the protected industries. A specific duty was added to the ad valorem rate on glass-ware, upon a statement by Mr. Adams that the duty fixed by the bill would destroy this branch of manufacture. The rates originally proposed on cabinet-wares, copper manufactures, hats and caps, carriages, wafers, black-lead pencils, and a variety of other articles were augmented by a single amendment which included them all. An amendment was adopted to reduce the duty on salt by one half, in Committee of the Whole, but was afterward rejected by the House.

The question which overshadowed all others was that of woollens. The advocates of adequate protection for this industry returned to the attack again and again, endeavoring to make an impression upon the majority, not large but determined, which resisted changes in the bill. Mr. Adams himself became convinced that he had gone too far and offered several amendments intended to repair his error. It would require an immense amount of technical explanation of the operation of the existing law upon a variety of goods and the anticipated effect of the several changes proposed, to bring the situation into clear view. As such a detailed exposition would be out of place here, it must suffice to say that the efforts of the advocates of protection to the woollen industry were at last concentrated in an attempt to save the manufacture of satinets from destruction. The extremely low rate of five per cent. was imposed by the bill upon all woollen goods valued at less than forty cents a square yard. The amendments

offered varied in form, but they all had the same purpose; and at the last the change proposed was to reduce the maximum valuation on which the lowest duty was to be assessed, from forty cents to thirty-three and one third cents. The effect of this would be to transfer satinets to the class paying fifty per cent. duty. The amendment was voted down, as previous amendments designed to accomplish the same end had been, by the help of a few Pennsylvania protectionists. Mr. Adams then moved to reduce the limit from forty cents to thirty-five cents, and remarked significantly that upon the result of the vote depended the question whether the bill would pass or not. The warning was heeded, the protectionists for once acted together, and the amendment was adopted by yeas 102, nays 85.

It was only for—once. The “log-rolling” so often charged against protectionists was conspicuous only by its absence. Massachusetts men voted against the iron duties asked for by Pennsylvania, and Pennsylvania men opposed New England wishes in the matter of duties on textiles. After the details of the bill were decided upon, the measure was acceptable to no one. The cross-voting was remarkable. Upon the third reading Messrs. Cambreleng and Verplanck, with other Northern free traders, voted *aye* with Messrs. Adams, Appleton, Storrs, and other protectionists; in the negative George McDuffie and Edward Everett, representing extreme views on opposite sides, were found in company. The third reading was carried by a vote of yeas 122, nays 65. Mr. McDuffie made another long speech in opposition to the bill, and then, under the operation of the previous question, it was passed, on the 28th of June, by a vote of 162 to 65.¹

¹ It is an interesting fact that a majority of Southern members — thirty-four in all — voted for the bill. South Carolina gave three votes for it. Many of those who voted thus did so, no doubt, not because they approved the provisions of the bill, but because it reduced existing duties.

On the next day it was referred by the Senate to the Committee on Manufactures, by which it was reported back, with amendments, on July 2. The amendments, which were numerous, were all in the direction of restoring the protection denied by the House. There was no general debate upon the bill; the amendments were voted upon forthwith. The most of them were adopted, generally by narrow majorities. The duty which applied to all but the cheapest woollen goods, was raised from fifty to fifty-seven per cent. by a vote of 25 to 23; but the amendment which would have retained the minimum system was defeated, 23 to 24. On many of the amendments every member of the Senate — 48, representing the twenty-four States then in the Union — gave his vote, and on several of them the Vice-President, Mr. Calhoun, gave the casting vote. Although the protectionists failed at some points, the general result was distinctly in their favor. On the minimum question, the only important one on which they suffered defeat, Senator Tipton, of Indiana, who was with them in most of the votes, acted with the opponents of the tariff. After all the amendments had been disposed of, the bill was ordered to a third reading by a vote of 31 to 15. Mr. Kane, of Illinois, was the only Northern senator who recorded himself in the negative. Nine Southern votes were given for the bill, by senators from the States of Delaware, Maryland, Kentucky, Tennessee, Louisiana, and Missouri.

The protectionists lost much that they had gained in the Senate by a parliamentary disaster of a most unusual character. The House agreed to some of the Senate amendments, but non-concurred in all the important ones relating to the woollen duties. When the bill was returned to the Senate, Mr. Wilkins, of Pennsylvania, moved that it be referred to a committee of conference. The motion, supported by Mr. Clay and his friends, and opposed by Mr. Hayne and the Southern senators

generally, was carried, and the president *pro tempore*, Mr. Tazewell, of Virginia, appointed as the Senate members of the committee, Messrs. Wilkins, Dickerson of New Jersey, and Hayne. The constitution of the committee was most unfortunate for the advocates of protection to woollens. It was never suggested that Mr. Tazewell intended to lay a pitfall for them, for Mr. Wilkins and Mr. Dickerson had voted steadily with Mr. Clay. But they both represented communities interested chiefly in the manufacture of iron, which had come out of the tariff battle uninjured. Mr. Wilkins occupied a peculiar position. The Pennsylvania Democrats were opposed to Mr. Van Buren as a candidate for Vice-President, and instructed their presidential electors to support General Jackson and Mr. Wilkins. The senator cared less for the woollen industry than for the fate of the bill. Accordingly when the conference committee met, he was ready to yield all that the House members asked. Mr. Dickerson yielded also, after a short and faint-hearted struggle. When, therefore, the committee reported, it was found that the recommendation was that the Senate should recede from all the amendments upon which concurrence had not been reached. The history of what took place in committee was brought out in open session by the replies of Senators Wilkins and Dickerson to the pointed and searching questions of Mr. Clay. Both Mr. Clay and Mr. Webster spoke indignantly of the surrender, but they were unable to prevent the acceptance of the recommendations. The Senate receded from all disagreed amendments, and the bill was promptly signed by the President on July 14, 1832.

The act made numerous and important changes of duty upon imported goods. The tabular comparison of the rates imposed by tariff acts in Young's "Customs-Tariff Legislation"¹ enumerates 49 articles as free of duty

¹ Government Printing Office, 1874.

under the act of 1828, and 180 under the act of 1832. None of the additions to the list were articles previously under a protective duty. The most noteworthy changes, as has been frequently stated, were those in the wool and woollens schedule. Wool valued at less than eight cents a pound was admitted duty free; on other wool the duty was fixed at four cents a pound and forty per cent. ad valorem. The former duties were fifteen per cent. on wool costing less than ten cents a pound, and four cents and fifty per cent. ad valorem on that of higher cost. The ad valorem duty on the cheapest woollen goods, those valued at less than thirty-five cents a square yard, was reduced to five per cent.; on other woollen goods it was raised from forty and forty-five to fifty per cent. The free wool of the cheap sort was a slight compensation for the practical reduction of the duty, notwithstanding the higher nominal rate, effected by the abolition of the minimums. The rate on worsted stuffs was reduced from twenty-five to ten per cent. Cotton goods escaped without reduction from the former rate of twenty-five per cent.; moreover, every attempt to abolish the minimum valuation was successfully resisted. The duties on iron were somewhat reduced, — on pig iron from $62\frac{1}{2}$ cents to 50 cents per hundredweight, and on some forms of wrought iron from $3\frac{1}{2}$ to 3 cents per pound.¹ Unmanufactured hemp was taxed forty dollars a ton, a reduction of one third. Brown sugar was reduced from 3 to $2\frac{1}{2}$ cents a pound. Glass was left unchanged, save that some insignificant classes of manufactured glass received a slight increase of protection.

The act contained two important changes of general tariff law, one favorable, the other adverse, to manufacturers. The value of the pound sterling was raised, in estimating the cost of imported goods, to four dollars and

¹ We are given to understand that the manufacturers of iron (in its early stages) are content with this arrangement, because of improved processes, etc. (Niles, vol. xlii. p. 184).

eighty cents, thus establishing a higher valuation and increasing the actual rate of duty. But on the other hand, the practice of adding ten per cent. to the cost as declared in the invoice, which had prevailed ever since 1789, was abolished and all laws requiring the addition were repealed. The date fixed for the act to come into operation was March 4, 1833.

It will be seen from the foregoing brief summary that, considered from a protectionist point of view, the act of 1832 was severe upon the woollen industry only.¹ Incidentally there was an intention to deal a blow at Kentucky, in the reduction upon hemp; but it hurt nothing but Mr. Clay's feelings. Kentucky never at any time raised hemp enough to make the duty or a repeal of it a matter of much moment. There were always splendid promises, but they were not realized, perhaps, not certainly, because adequate protection was never extended long enough to enable the State to take advantage of it and to establish the cotton bagging industry on a firm basis. Sugar, also, which was not as generously dealt with in the act of 1828 as the Louisiana members thought it deserved, was subjected to another reduction,—a punishment dealt out by the Southern members to the Louisiana delegation, which stood sturdily by the principle of protection, and a penalty which the popularity, in the Northern communities, of cheap sugar rendered it easy for them to inflict. Pennsylvania came out of the contest without injury. A small reduction of the duties on some varieties of iron and ample protection of glass

¹ The disaster even to that industry was not as great as was feared. The act of 1828 seems to have given an impetus to the manufacture which was not lost. It led to the adoption of improved machinery which cheapened production, and to the erection of larger mills which were operated more economically than the small factories. Add to this that the act of 1832 was, as Mr. S. N. D. North puts it in his "History of the New England Woollen Manufactures," "fairly protective," and that the tariff of 1833 continued so to be until the financial crash of 1837.

seem almost like a recompense for fidelity to the administration.

The act of 1832 was followed by "nullification." It would be too much to say that it was the cause of the action of South Carolina, or that it was a culmination of the offences which, in the view of the public men of that State, justified the bold step of declaring a general revenue law passed by Congress unconstitutional, void, and inoperative within the limits of that "sovereign" State. South Carolina demanded a complete abandonment of the protective system. Since the act of 1832 was no more than a modification and a mitigation of protection, it was in a certain sense a refusal, formally and definitely made, to accede to the demand. Nevertheless, regarding the grievance of South Carolina as a matter of oppressive taxation, and not as one of political menace, the act did ameliorate the situation. Almost every change made by the new tariff was in the direction of lower rates. Aside from the reductions already mentioned, on the protected articles, the additions to the free list, including the highly important articles of tea and coffee,¹ lessened greatly the burdens of consumers. But on the other hand, Mr. Clay, Mr. Niles, and all the supporters of protection declared that the act confirmed and established the American system as the permanent policy of the country.

The men of South Carolina took the same view. They were contending for a principle more than for a lightening of heavy burdens. Indeed, it is not uncharitable to doubt if their feeling of financial oppression was anything more than a fancy born of their supersensitiveness to political subjection. Be that as it may, from their own point of consideration the persistence of the North in the protective policy was logically a fresh reason for

¹ Coffee was duty free if imported from beyond the Cape of Good Hope in United States vessels; otherwise it paid ten cents a pound. At that time the whole supply of coffee was grown beyond the cape.

taking the step for which they had long been preparing the public mind. Of course, in order to justify their conduct fully one must concede, first, that the Constitution is a compact between sovereign States, which each State has a right to interpret finally for itself, that there is no common arbiter, and that — according to the Virginia and Kentucky resolutions of 1798 and 1799 — “nullification is the rightful remedy” for acts which a State deems unconstitutional; and, secondly, that a tariff for any other purpose than revenue is unconstitutional. At the present day no public man of any State or any party is known to hold the first of these principles; it is difficult to see how any one who has studied the history of the constitutional question and weighed the authorities can hold the second.

The presidential contest of 1832 resulted in the defeat of Mr. Clay and the triumphant reelection of General Jackson. South Carolina, with a purpose to express its sense of isolation and its indifference as to the result, threw away its votes. The electors appointed by the legislature cast the eleven votes of the State for John Floyd, then governor of Virginia, for President; and for Henry Lee, of Massachusetts, the famous free trade pamphleteer, for Vice-President. The nullification ordinance; the act of the legislature to carry it into effect; the preparations to resist the collection of revenue at Charleston; and the proclamation of the President which virtually put an end to the nullifying project, and which gave the North and the South, too, for that matter, a rallying-ground against the separatist policy; all these are matters of history to which reference must be made here — although all the details may be omitted — because they had a profound, a controlling effect upon the tariff legislation of the next quarter of a century. For although South Carolina failed to carry her point by violence, it was beyond all question due to her uncompromising stand and her belligerent

attitude that a complete change in the national policy was effected. It cannot be too strongly insisted upon that the change was in no degree due to a failure of the protective system either to accomplish its prime object of establishing manufactures or to render the country independent industrially. As a fiscal system, it succeeded only too well. It may be denied that it promoted prosperity; it cannot be asserted that it prevented prosperity. It did not make the prices of commodities higher if it did not make them lower. It was a more popular system at the moment it began to be abandoned than it was when it was put in practice in an extreme form. The fresh strength which the movement against it acquired was wholly political and in no sense economical. It was a question of sacrificing the interests of the North, which would not threaten a dissolution of the Union, or of yielding to the South, which had discovered that its system of slavery could be secure in the Union only so long as that section of the country had equal or controlling weight in the councils of the nation. The North was chosen for the sacrifice.

Congress met in December, 1832, at the height of nullification excitement. The President, who was not timid himself, gave the cue to all who were weak by his treatment of the tariff question in his annual message. Having referred with satisfaction to the extinction of the national debt, and having made the suggestion that the event afforded an occasion for a reduction of taxation,—as though taxation had not been already reduced by the act of 1832,—he stated the principle that the revenue should be adapted to the expenditure, and the expenditure limited to the needs of a government economically and efficiently administered. He proceeded:—

In effecting this adjustment it is due, in justice to the different States, and even to the preservation of the Union itself, that the protection afforded by existing laws to any

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branches of the national industry should not exceed what may be necessary to counteract the regulations of foreign nations and to secure a supply of those articles of manufacture essential to the national independence and safety in time of war. If upon investigation it shall be found, as it is believed it will be, that the legislative protection granted to any particular interest is greater than is indispensably requisite for these objects, I recommend that it be gradually diminished, and that as far as may be consistent with these objects the whole scheme of duties be reduced to the revenue standard as soon as a just regard to the faith of the government and to the preservation of the large capital invested in establishments of domestic industry will permit.

That manufactures adequate to the supply of our domestic consumption would in the abstract be beneficial to our country there is no reason to doubt, and to effect their establishment there is perhaps no American citizen who would not for a while be willing to pay a higher price for them. But for this purpose it is presumed that a tariff of high duties, designed for perpetual protection, has entered into the minds of but few of our statesmen. The most they have anticipated is a temporary and, generally, incidental protection which they maintain has the effect to reduce the price by domestic competition below that of the foreign article. Experience, however, our best guide on this as on other subjects, makes it doubtful whether the advantages of this system are not counterbalanced by many evils, and whether it does not tend to beget in the minds of a large portion of our countrymen a spirit of discontent and jealousy dangerous to the stability of the Union.

What then shall be done? Large interests have grown up under the implied pledge of our national legislation, which it would seem a violation of public faith suddenly to abandon. Nothing could justify it but the public safety, which is the supreme law. But those who have vested their capital in manufacturing establishments cannot expect that the people will continue permanently to pay high taxes for their benefit, when the money is not required for any legitimate purpose in the administration of the government. Is it not enough that the high duties

have been paid as long as the money arising from them could be applied to the common benefit in the extinguishment of the public debt?

Those who take an enlarged view of the condition of our country must be satisfied that the policy of protection must be ultimately limited to those articles of domestic manufacture which are indispensable to our safety in time of war. Within this scope, on a reasonable scale, it is recommended by every consideration of patriotism and duty, which will doubtless always secure to it a liberal and efficient support.

The danger of going beyond that point led the President directly to the topic of the discontent "in one quarter of the United States" which threatened to thwart the execution of the revenue laws, "if not to endanger the integrity of the Union." The inference clearly to be drawn from the juxtaposition of the two subjects was that he favored a measure which would remove the danger of discontent by a practical concession of South Carolina's demand. That he was not in the least disposed to yield to that demand when put in the imperative mood, he was presently to show in the most striking manner. No further reference need be made to the nullification episode, nor to the Revenue Collection Bill, or "Force Bill," as it was called, which shared with the tariff the almost exclusive attention of the Twenty-second Congress at its second session.

The opponents of the tariff entered upon their campaign with aggressiveness and confidence at the beginning of the session. The subject of reducing taxation was referred to the Committee of Ways and Means.¹ Mr. Gulian C. Verplanck, of New York, one of the most earnest and consistent free traders in Congress, was chairman of the

¹ The subject of manufactures and the proper protection for them was also referred to the Committee on Manufactures. The Journal of the House of Representatives does not show that the committee ever reported; but Mr. Adams made a minority report in which strong ground was taken in opposition to the President's language upon the tariff.

committee. He occupied a position identical with that of Mr. Gallatin in that he entertained no doubt whatever of the constitutionality of any tariff Congress might enact. His letter to Colonel Drayton, of South Carolina, arguing that no limitation on the power of Congress was imposed by the Constitution, was greatly used to support the contention of the protectionists. Mr. Verplanck was as earnest in his conviction that protection was inexpedient as he was strong in the belief that the right to grant it was unquestionable. The Committee of Ways and Means contained but two members who favored protection theoretically ; and one of the two, Mr. Gilmore, of Pennsylvania, joined with the majority in reporting Mr. Verplanck's bill, on the 27th of December, only seventeen days after the appointment of the committee.

The appearance of this bill in the House of Representatives was the signal for one of the greatest and most interesting and dramatic battles of the whole tariff war. From the first the protectionists realized that they had to fight for existence. They were confronted by a united and determined enemy, and were weakened for the contest by having among them many men who were timid, although loyal, and many more who were false and ready at the right moment for their own political future to desert to the other side. They were indignant while they were despondent. The bill seemed to them a needless and ruinous surrender of the protective system, which was not called for by any truly national interest. Its provisions were radical both as to the permanent rates of duty proposed and as to the suddenness with which the drop to those rates was to be made. Wool and woollens were, as usual, dealt with more severely by the opponents of protection than any other articles. The duty on wool costing more than eight cents a pound, on which the act of 1832 imposed four cents a pound and forty per cent. ad valorem, was to be thirty-five per cent., without a

1835
1831

specific duty, until March, 1834, twenty-five per cent. for the next year, and after March 2, 1835, twenty per cent. Woollen manufactures, charged with fifty per cent. by the act of 1832, were to bear a duty of forty per cent. for one year, thirty per cent. for a second year, and thereafter twenty per cent. Cotton goods were to be cut down to twenty per cent., the minimum to be abolished, after one year, that is, in 1834. The duty on iron and its manufactures, which was specific, and actually a higher duty *ad valorem* than that on woollens, was left unchanged for one year, and thereafter was to be reduced only twenty per cent.¹ Hemp, cordage, salt, sugar, molasses, and some other articles were cut down, some more, some less, arbitrarily. A restoration of duties on tea and coffee was a singular provision of a bill professedly brought forward to dispose of excessive revenue. Inasmuch as the bill was not passed, it is unnecessary to go further into details.

Discussion began on the 5th of January. Mr. Verplanck entered into an explanation of the reasons for passing an act reducing the revenue, drawn from the financial condition of the country. His speech was not fully reported; the summary of it gives no intimation that he made any exposition of the principles on which the committee had acted in choosing objects of revenue reduction. In fact, he seems to have done no more than prove, what was admitted, that the tariff might be reduced without causing a treasury deficit. The debate which followed was one of the most interesting in the whole history of tariff discussion. On the protectionist side the members were aroused and excited. There was an absence of the academic tone which had characterized the set speeches at the preceding session. The speakers exposed mercilessly the essentially political character of the movement to make a new tariff before that passed by the same Congress

¹ From 50 cents to 40 cents per hundredweight on pig; from \$30 to \$24 on bar and bolt iron; and so on.

at the previous session had taken effect. A few extracts from the speeches will show how keenly they pressed this accusation.

Mr. Huntington, of Connecticut, the first speaker after Mr. Verplanck, said that "it was too plain to be denied that had it not been for the demonstration in a certain quarter they should never have heard of the present bill."¹ Mr. Rufus Choate, of Massachusetts, made an extremely able speech almost wholly devoted to an examination and refutation of the idea that the political circumstances of the time were a sufficient reason for passing the bill. "It would be mere affectation in me, sir, to pretend not to see that this bill is introduced because South Carolina has prospectively nullified the law which we made *in pari materia* five months ago. The chairman of the Committee of Ways and Means does not, to be sure, say this in his speech or in his report; but there is not a man, woman, or child in the United States who does not know it, and who would not laugh in your face to hear the contrary."² Mr. Jenifer, of Maryland, said the bill "might appear to some to be the result of a combination to preserve particular interests without regard to the sacrifice of others, or a political manœuvre to ensure the balance of power."³ Mr. Appleton, of Massachusetts, said: "The only ground after all on which the immediate and hurried action of this House can be justified is that it is necessary to the preservation of the Union."⁴ Similar passages might be quoted from almost every speech made in opposition to the bill. Nor was the accusation denied by its supporters. Mr. Root, of New York, a free trader, — except when wool growers were denied protection, — said: "Unquestionably the bill before the House was introduced for the accomplishment of the purposes recommended by the President at the opening of the session, and with a view

¹ "Register of Debates," vol. ix. part i. p. 974.

² *Ibid.* p. 1063.

³ *Ibid.* p. 1140.

⁴ *Ibid.* p. 1204.

to conciliate if possible their Southern brethren and to induce them to stay their hand in opposing the laws. This bill, then, whether regarded as an act of justice or as a sacrifice offered up on the altar of their country, was certainly a laudable measure. As an act of justice he was willing to support it."¹ Mr. Verplanck, in a second speech, referred to the assertions of the protectionists, which he chose to treat as an accusation that the bill was born of the fears of those who devised it. "Fears! Mr. Chairman — fears! Let us not be deceived by the sound of words. . . . I cannot for a moment insult my worthy high-minded colleagues on the committee by thinking it possible that such cowardice had for a moment influenced their decisions. I should blush for myself if it had ever mastered my own thoughts for a moment."²

Mr. Verplanck proceeded to give his own version of the reasons for passing a new tariff bill, which, it will be seen, differ only in the way of putting them from that of his opponents. "We have arrived at a period in the financial history of our Union when we can still further and without hazard diminish the revenue and lighten the taxation, direct and indirect, of the whole people. Against the continuance of some of these burdens seven States of our confederacy have more than once — and some of them again within a month or two — remonstrated as oppressive and unconstitutional. Large classes and numerous bodies of citizens in other portions of the country, together with, I believe, two of our Northern States in their sovereign capacity, — New Hampshire and Maine, — have reëchoed this complaint though with an important variation. They have said that such taxes were not unconstitutional but oppressive and unjust. Be it that these complaints were quite unfounded. Be it that the laws were constitutional. I myself have held and avowed the latter opinion. Be it that the duties were equal, just, and, when wanted for

¹ "Register of Debates," vol. ix. part i. p. 1103.

² *Ibid.* p. 1129.

the Treasury, useful. Still the firm and deep-rooted conviction, not of South Carolina alone but of nearly the whole South and of thousands of citizens throughout the Northern and navigating States, is that which they have so often urged upon us. They think themselves oppressed. Shall, then, the majority of this people continue to impose upon the minority, and a large minority, too, even for another year, burdens which that minority believe to be oppressive, and that for the sake of collecting taxes which are no longer needed? Is this right? Is it just? Is it wise and statesmanlike? Is it even prudent?"

Mr. Wilde, of Georgia, who made an extremely indiscreet speech, many passages of which were disavowed by the supporters of the bill, said: "The bill by no means concedes all that Carolina claims as a matter of strict right; but it may present terms which for the sake of harmony she would accept. . . . Upon the passage of this bill or one similar in principle depended, he believed, the peace and integrity of the Union. If it was lost the people of the South should know how, why, and by whose fault it was lost."¹ These extracts prove conclusively that the sole motive of the bill was to pacify the South and particularly South Carolina. Mr. Verplanck virtually admitted in the passage quoted that he believed the tariff to be oppressive quite as little as he believed it to be unconstitutional. His references to the action of New Hampshire and Maine must have brought a smile to many a congressman's face. New Hampshire was dominated politically by Isaac Hill, a former member of the "kitchen cabinet" and now a senator, who acted throughout his public life with the South; and Maine was hardly less subservient to the Southern wing of the Democratic party.

It must not be supposed that any considerable part of the debate on either side was devoted to this point. The protectionists went thoroughly into an examination of the

¹ "Register of Debates," vol. ix. part i. p. 1251.

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provisions of the bill, and showed clearly that it would effect but a slight reduction of the revenue, which was the avowed object of the bill. Indeed, an increase of importations equal to that of 1831 over 1830 would result in overcoming all the reductions in the rate of duty; and the effect of a reduction of rate in stimulating importations was admitted. Supporters of the bill did not undertake to meet this criticism. They based their assertions of a remission of gross taxation on the trade returns of the last year reported. Few of the advocates of the bill attacked the principle of protection. Mr. Polk, afterward President, did so, basing his chief arguments on the one-sided and discredited testimony taken by the Committee on Manufactures in 1828. One or two speakers referred to the supposed enormous profits of manufacturers under the protective system. It came out in the discussion that an attempt had been made by the Treasury Department through its local agents to ascertain the profits of these persons and companies engaged in the protected industries. As was to be expected, they met with little success; but they sent their estimates, the most trustworthy of which were based on neighborhood rumor; and these "facts" were used by some of the speakers to substantiate the position that protection was enriching the manufacturers at the expense of the rest of the community. The most thorough examination of this position was made by Mr. Nathan Appleton, of Massachusetts, himself one of the most eminent of the cotton manufacturers of Waltham and Lowell. His rapid sketch of the history of the manufacture, of the conditions which had given it success, of the measure of that success, and of the situation of the industry at the time, is worthy to be reproduced in full in an industrial history of the country; but in this place only a reference can be made to it.¹ He proved irrefutably that the profits of manufacturers of cotton goods were

¹ "Register of Debates," vol. ix. part i. pp. 1210, 1215-1224.

not excessive, not even more than the ordinary profits of mercantile establishments.

In the course of the debate, which was continued in Committee of the Whole until the 7th of February, various amendments were voted upon. In some cases the result was favorable to the protectionists, but it was usually adverse to them. Mr. John Quincy Adams made a motion to strike out the enacting clause, and supported it with a sharp speech almost wholly devoted to the relation of the tariff bill to slavery and South Carolina nullification. Colonel Drayton, the leader of the Union party of South Carolina, replied in a spirited speech, and the motion was defeated, 68 to 85. After the bill was reported to the House, the sessions were occupied almost daily until the 12th of February with further discussion and with voting upon amendments made in Committee of the Whole and upon amendments to those amendments. On the day just mentioned, a series of new propositions appeared, to understand which it is necessary to transfer attention for a time to the Senate.

During the first ten weeks of the session the tariff had been mentioned only incidentally in the Senate debates. Mr. Clay's resolutions for distributing the proceeds of the public lands, and the "Force Bill" had occupied most of the time. On the 11th of February Mr. Clay gave notice that he should on the next day ask leave to introduce a bill to modify the various acts imposing duties on imports. He had come to the determination to offer this measure with the hope—perhaps vain hope—of reconciling conflicting opinions in this country on the subject to which it related.¹ On the 12th "the Senate was the scene of the most intense interest. A multitude of both sexes filled the hall; profound silence and gravity prevailed, and deep sensation was evinced as much by the general silence as by the marked interruption of it once or twice by audible emotions."² The bill in its original

¹ "National Intelligencer."

² *Ibid.*

form — and it subsequently suffered no material change, with the exception of one important addition, which will be mentioned hereafter — provided (1) that from all duties in excess of twenty per cent. of the value of such goods laid by the act of July 14, 1832, or by any other act, one tenth of the excess should be deducted on the 30th of September in each of the years 1833, 1835, 1837, and 1839; one half of the remaining excess in 1841, and the other half in 1842; (2) the duty on woollens valued at not more than thirty-five cents a square yard was raised from five per cent. to fifty per cent., to be subject to the above-mentioned deductions; (3) “until the 30th day of September, 1842, the duties imposed by existing laws as modified by this act shall remain and continue to be collected;” after that date all duties should be “laid for the purpose of raising such revenue as may be necessary to an economical administration of the government, should be uniform, at the rate of twenty per cent. upon all articles not made free of duty, and should be collected in ready money; (4) several articles — linen, silk goods, worsted stuffs, and shawls — were to be free of duty after September, 1833, and a long list of articles was to be placed on the free list in 1842.¹

Mr. Clay began his speech by saying that the country presented a prospect of the most gratifying prosperity, without a cloud, “were it not that through all parts of the country there exist great dissensions and unhappy distinctions which, if they can be relieved and reconciled by any broad scheme of legislation, adapted to all interests and regarding the feelings of all sections, ought to be quieted; and leading to which object any measure ought to be well received.” He had, he said, two great objects in view: first, the tariff. “I am compelled to express the opinion,

¹ The dates of the several deductions were changed subsequently to December 31 of the years mentioned. The final deduction was to be June 30, 1842.

formed after the most deliberate reflection, and on a full survey of the whole country, that, whether rightfully or wrongfully, the tariff stands in imminent danger. If it should even be preserved during this session it must fall at the next session." He drew an appalling picture of the evils that must follow so radical a measure. His bill proposed to mitigate these evils by coming down to the revenue standard gradually, in a period of nine and a half years. He took up the bill section by section, explained its provisions, and anticipated the objections to it. The most obvious and important objection, that it was prospective and bound the successors of that Congress, he answered by saying that almost every act was prospective, but it could be repealed the next day. But if this bill should go into operation, as he hoped even against hope that it might, he had not a doubt that it would be adhered to by all parties. His meaning evidently was, although he did not express it in words, for reasons which are apparent, that the opponents could not overthrow an arrangement which they chiefly were to make, in opposition to the protectionists; and that the ultra-tariff men would not dare to disturb it through fear of a worse fate.

A considerable part of the speech was devoted to an attempt to minimize the extent of the concessions which he asked the friends of protection to make. It was not an abandonment of protection, only a suspension of it. The power remained. The bill provided how, after the year 1842, it should be exercised, namely, by giving the manufacturers free raw materials. "The most," he said, "that can be objected to the bill by those with whom he had co-operated to support the protective system was that in consideration of nine and a half years of peace, certainty, and stability, the manufacturers relinquished some advantages which they now enjoyed."

It was in dealing with the second of the two great objects in view which he had mentioned at the beginning of

his speech that Mr. Clay shone forth most brilliantly as a pacificator. At the beginning of the session he had been opposed to legislating on the tariff because he had supposed that it was at the demand of a State which had "taken an attitude of defiance and hostility against the authority of the general government. He had imagined that she had arrogantly required that we should abandon at once a system which had long been the settled policy of this country." While he had been under the erroneous impression that this was the attitude of South Carolina, he had been inclined to hurl defiance back again. But he found he was mistaken. "He found that South Carolina did not contemplate force. . . . She disclaimed it and asserted that she is merely making an experiment—by a course of State legislation and by a change in her fundamental laws she is endeavoring by her civil tribunals to prevent the general government from carrying the laws of the United States into operation within her limits. . . . Her appeal was not to arms but to another power; not to the sword but to the law. . . . As the purpose of South Carolina was not that of force, this at once disarmed, divested legislation of one of the principal objections which it appeared to him existed against it at the commencement of the session." This and much more to the same effect. Mr. Clay discounted the "experiment" as "rash, intemperate, and greatly in error;" but, having persuaded himself that South Carolina was in an attitude of defiance, not intending violent resistance, but putting up her fists merely to see what the United States would do about it, he saw all his objections to a present revision of the tariff, as a yielding in the face of threats, melted completely away.

If there had been any doubt before this sensational movement by the earliest and most stalwart champion of the American system, that the protective tariff as it was exemplified in the act of 1828, or even in that of 1832, was doomed, there was doubt no longer. The enemy had

nearly forced the defences already; now the captain of the besieged army offered to surrender the fort provided he were permitted to withdraw at leisure and with the honors of war.

That is one view and the most natural view of the course adopted by Mr. Clay. There is another aspect in which it may be regarded. Clay's biographers and those historians who have reviewed his public life have discussed his sudden and unannounced change of front with much minuteness. The method of reducing duties uniformly was one which he had examined in his speech only one year before, and had condemned it.¹ The rates of duty he proposed in his bill he would never, at any former time, have consented to as adequate. He would have scouted the idea that free raw materials were a sufficient protection to the manufacturer; and furthermore he did not offer the woollen manufacturers free wool. His version of South Carolina's acts and purposes could not have seemed plausible even to himself. In his new movement he forsook those whom he had always led in tariff campaigns, — unless it be preferred that they forsook him, — and sought allies among those who had for twenty years combated his tariff views, plans, and motives with voice and vote.

Yet this action was not treachery; it was not timidity; we may even say it was not a result of misjudgment nor a piece of bad tactics. He did not determine upon his course until he was convinced that without strategy the cause was lost, nor until he had a strong assurance that his plan could be carried. He could not persuade more than a handful of his old followers to make the *volte-face* at his command; but possibly the success of his plan was promoted by the fact that it was opposed by the old guard of the protectionists. Many of them expressed their astonishment at Mr. Clay's despondent words about the future of the tariff. They did not believe it was in

¹ Page 371.

danger. But they were blind. The temper of Congress under the influence of the withdrawal of all pretence of support by the President, of the pressure by the Southern members and the subserviency of that class of Northern men aptly described by John Randolph as "doughfaces," and above all of the unanswerable argument that the Treasury did not need the high taxes,—the temper of Congress in these circumstances was clearly in favor of a radical treatment of the tariff question. His purpose being to save what he could, Mr. Clay was surely right. His conduct was dictated by political considerations not less than was that of the free traders of the House. Undoubtedly he saved his cause from a crushing and overwhelming defeat. Nothing is easier than to show that he acted inconsistently, nothing is more obvious than that he had answered his own speech a year before he delivered it. Nevertheless, he deserves admiration for the comparative freedom from maladroitness which characterized his announcement of the compromise plan.

We need not follow closely the debate in the Senate which followed the presentation of Mr. Clay's bill. Mr. Webster and other thoroughgoing protectionists opposed it, and so did Mr. Benton, for reasons which he does not explain satisfactorily in his "Thirty Years' View." Perhaps it is not too unjust to say that Mr. Clay's leadership was a sufficient reason to insure his opposition to any measure. There was slight opposition to granting leave to introduce the bill, but the objections were withdrawn, and the next day the bill was referred to a select committee consisting of Messrs. Clay, Calhoun, Grundy, Webster, Clayton, Rives, and Dallas,—seven eminent senators, whose opinions and action could be foretold. Mr. Webster was opposed to the measure, and so apparently was Mr. Dallas. The others voted with Mr. Clay on the preliminary motions. Mr. Calhoun had resigned the vice-presidency, and had been chosen a senator from South Carolina

to succeed Mr. Hayne, elected governor. He made speech, brief but significant, in the short debate which took place after Mr. Clay's explanation and advocacy of the bill. He declared that he approved the object for which the bill was introduced and its general principles. It had been his fate to occupy a position as hostile as any one could, in reference to the protecting policy; but if it depended on his will he would not give his vote for the prostration of the manufacturing interest, by suddenly withdrawing the duties by which the large capital invested in manufactures was sustained. He did not approve some of the details of the bill; but minor points of difference might be adjusted. The galleries received this intimation that the Clay bill would have the support of South Carolina and of those who accepted its leadership with such "tumultuous approbation" — according to the official reporter — that the Chair ordered the galleries to be cleared. The order was not executed.

While the bill of Mr. Clay was under consideration in committee, Mr. Webster introduced a series of resolutions condemning the principles on which that bill was based: the equal per centum reduction; the neglect of discrimination in choosing articles on which the duty was to be reduced; the promise of a strict revenue system; the surrender of the right to impose protective duties; and the pledge that future Congresses should not disturb an arrangement entered into by the existing Congress. He proposed to discuss the resolutions, but there is no record that he did so.

Mr. Clay reported the bill back to the Senate, with amendments, on February 19. At the same time he gave notice of an amendment, to be offered later, on the subject of the valuation of goods. On the 21st — the "Force Bill," which had been blocking the way for a long time, having been passed on the 20th — the tariff bill was taken up. There was a brief discussion upon the

amendments which were mainly of phrasing and arrangement of clauses. Mr. Dickerson, of New Jersey, wished to be informed if the bill did not indirectly do away with the principle of incidental and discriminating protection; and Mr. Clay replied that after nine and a half years the principle of protection was limited to twenty per cent., "but below that amount the principle is expressly reserved," — a statement which the reporter should have followed with an exclamation point.

The amendments were adopted in gross. Then Mr. Clay offered the important amendment of which he had given notice — a provision that in 1842, when payment of duties in cash and the final reduction to a uniform rate of duty were to come in force, "duties shall be assessed upon the value thereof at the port where the same shall be entered, under such regulations as may be prescribed by law." This was to substitute the "home valuation" for the foreign valuation. It was to add freight and insurance to the amount on which the twenty per cent. duty was levied; and it would do away altogether with the frauds so long practised in invoices. It was evident from the first that this amendment contained a significance which did not appear on the surface. Mr. Clay spoke of it in a way to convey the impression that the bill could not pass unless the amendment were adopted. Mr. Benton supplies an explanation which may be true in the main, but which in detail is contradicted by the official record and is certainly false. His statement is that Mr. Clayton, of Delaware, demanded, insisted, that the amendment should not only be adopted but should be supported by the South and by Mr. Calhoun and the nullifying senators in particular; and that the demand was coupled with a threat that unless it were complied with the bill should not pass.¹ It is quite possible that

¹ See chapter lxxxv. of "A Thirty Years' View." Benton gives therein the "secret history" of the compromise; but it is hardly credible that

the adoption of the amendment was agreed upon by the protectionists of the type represented by Mr. Clayton, and Mr. Holmes, of Maine, as a condition *sine qua non*; indeed that fact is a strictly natural inference from words spoken in public debate. At all events, it was supported by both the South Carolina senators, and by those of Virginia, Alabama, and Mississippi. Nine of the twelve

any one who was concerned in the affair would have revealed the history of it to him. He was an Ishmael in the case, for he was not a protectionist nor a free trader; he was an opposer of Nullification, an enemy of Clay, an enemy of Calhoun, an opponent of Webster,—in short, one who agreed with no one—unless he represented Jackson—in the matter of the tariff. He represents that when Clay offered the home-valuation amendment, “Mr. Calhoun and his friends met it with violent opposition, declaring it to be unconstitutional;” that “it was then late in the day, and the last day but one of the session;” that Mr. Clayton, in order to carry out his threat, moved to lay the bill on the table, “with the declaration that it was to lie there;” that Clay in vain besought him to withdraw the motion; that Calhoun and his friends held a caucus behind the Vice-President’s chair, and that the result of the conference was a provisional withdrawal of the motion to lay the bill on the table and an adjournment of the Senate for the day; that there were renewed attempts to move the obdurate heart of Mr. Clayton, but without avail; and that finally Mr. Calhoun yielded and voted for the obnoxious amendment. This account agrees in some particulars with the official report of the debate made on the spot and printed in the “National Intelligencer” the next day; it is widely at variance with it in the most important particulars. First of all, the discussion did not take place on the 2d of March,—the last day but one of the session,—but on the 21st of February, when a fortnight of the session remained, and when it mattered little what the Senate did, since the House of Representatives was engaged upon a bill which would be sent up for concurrence. Again: it is true that Mr. Calhoun raised the constitutional objection, but without heat. He spoke four times on the subject on the day the amendment was introduced, and on each occasion left himself a logical way of escape from his attitude of opposition. On the last occasion he said expressly that he “would raise no cavilling objections. He wished to act in perfect good faith, and he only wished to see what could be done.” These facts are sufficient to prove Mr. Benton’s account quite inaccurate. He might be contradicted upon other minor points, but it is quite unnecessary to occupy space in doing so. His untrustworthiness in narrating matters which are of official record renders his account in the same chapter of the origin of the Clay bill, concerning which he could not have been informed either at first or second hand, quite valueless, and it is accordingly not alluded to in the text.

New England senators voted for the amendment. Mr. Webster opposed it as an unusual and impracticable measure, and because of his general preference for specific rather than *ad valorem* duties. The vote on the amendment was, yeas 26, nays 16.

The further debate upon the bill in the Senate is important only as it discloses clearly the mutually hostile attitude of Mr. Clay and Mr. Webster. There was more than once a tone of asperity in the remarks they addressed to each other. Many amendments were offered, upon almost every one of which Mr. Webster voted in the affirmative and Mr. Clay and Mr. Calhoun in the negative; and late in the evening on February 23 (Saturday) the bill was ordered to a third reading without a division.

We return now to the House of Representatives, where the Verplanck bill had been dragging along for many weeks. On the same day that Mr. Clay gave notice that he purposed introducing his bill, the feeling seems to have come to those on both sides of the House that the bill could not pass. Mr. Dearborn, of Massachusetts, moved to lay it on the table, which was equivalent to a motion to reject it. The motion having been defeated, Mr. Drayton, of South Carolina, remarked that it must be obvious that the bill with its numerous amendments could not be passed in the short remaining time of the session, and moved to recommit it to the Committee of Ways and Means with instructions to report a bill continuing present duties until March, 1834, and then to reduce them one third. Mr. Wyckliffe, of Kentucky, proposed a modification of the instructions, namely, that from March, 1834, the duties should be reduced annually, and equally each year, so that in 1840 they should have reached twenty per cent. Mr. Irvin, of Ohio, proposed a reduction of duties ten per cent. annually until the revenue should be reduced to the wants of government. Mr. Wardwell, of New York, proposed a five per cent. annual reduction.

It will be seen from these propositions that the principle of Mr. Clay's bill was in the minds of several members before the details of that measure had been made public. Whether it occurred to them independently, whether they were cognizant of the plan of the great Kentuckian and were carrying out his purpose by making their several suggestions, or whether they had learned something of his intentions and were endeavoring to forestall him, cannot, of course, be even conjectured; but it is quite obvious that the general idea was familiar to the House long before the decisive action was taken on the 25th of February.

On the 12th of February Colonel Drayton modified his proposed instructions. Duties on the protected articles were to be reduced five per cent. and on all other articles ten per cent. annually, until the revenue should not exceed the authorized expenditures of government. He was followed by several other members, each having a suggestion of his own as to the instructions to be given. Mr. Carson, of North Carolina, moved the recommitment of the bill without instructions. The House was in no mood to take definite action. The attendance was thin. "A great many members were absent in the Senate chamber where Mr. Clay's bill was under discussion," records the official reporter. No decision was made on that day, and the bill was not again taken up until February 18. On that day all the motions to recommit were withdrawn; and although there was not time to get through the bill in the regular way, the consideration of amendments made by the Committee of the Whole and offered by individual members was resumed. There is little significance in the reversion to the former programme. Evidently the House was waiting for the Senate, and the debates during the week were dreary and profitless.

The Senate having clearly demonstrated its purpose and its power to pass the Clay bill, and having equally

indicated its intention to pass no other, the time had come, on the 25th of February, to bring it directly before the House. Mr. Letcher, of Kentucky, made a motion to strike out all after the enacting clause and to insert Mr. Clay's bill in lieu thereof. The motion was held to be unparliamentary, but the object was accomplished by a series of motions, and after three short speeches had been made in opposition the bill was ordered to be engrossed for a third reading, yeas 105, nays 71. On the next day there was a brief debate, at the close of which the bill was passed by a vote of 119 to 85—South Carolina unanimous in the affirmative; Massachusetts unanimous in the negative; Pennsylvania divided, four in favor of the bill and twenty-one against it;—from which facts one may infer the state of opinion upon the bill, and the extent to which Mr. Clay's assertion that it maintained the principle of protection was accepted.

The bill was taken instantly to the Senate and was read a first time on the same day. On February 27 it was ordered to a third reading without a division. It was discussed at some length on the 1st of March. First came an able speech in opposition by Mr. Robbins, of Rhode Island. Some suggestive sentences may be quoted out of their connection to indicate the keenness of the analysis he applied to the measure:—

The bill carries with it the idea that the protective policy is an evil in itself,—an evil to be deprecated and not to be tolerated for a moment but to prevent a greater evil, namely, the evil of a sudden overthrow of the great establishments dependent upon it; and to be tolerated only for a few short years to give to those establishments an opportunity to wind up their affairs and enable them, so far as that time will enable them, to prevent the consummation of their ruin. . . . It has been said that it preserves the principle of protection. What signifies it to preserve the principle of protection if protection itself is not preserved? . . . I know it has been said that this

bill is not what it professes to be — a permanent system for this country. But if this system is to be adopted and then destroyed, who are to destroy it? We, the friends of the policy, are to make the attack. . . . I do not like the idea of first giving up our possessions and then of going to war to recover them back.¹

Mr. Calhoun followed. He had serious objections to some features of the bill, but they were all outweighed by the fact that the measure provided as the final result that the revenue should come down to the just and economical wants of the government. He had no faith in legislative pledges and placed no reliance upon the pledge contained in this bill, but upon the circumstances under which it was about to pass. He had no fear that any one would be so reckless as to attempt to reinstate the system with the present experience before his eyes. The South Carolina senator was followed by other speakers — by protectionists who thought the bill surrendered the principle of protection, and by other protectionists who thought the principle not surrendered, and who opposed the bill while gloating over the fact that the Southern members must “swallow” the principle; by Northern Democrats and by Southern Democrats who deemed the bill full of objectionable features, but had resolved to vote for it in the interest of peace and harmony. Mr. Clay closed the debate in a speech full of conciliatory language, but containing no new arguments.

The bill was then passed, by yeas 29, nays 16, — three members only being absent. The entire vote of the South except that of the Missouri senators was given for the bill. Even New England was evenly divided, Maine, New Hampshire, and Connecticut supporting the bill, and Vermont, Massachusetts, and Rhode Island opposing it. The President approved the bill on the 2d of March.

The long struggle was ended. The “Force Bill” and

¹ “Register of Debates,” vol. ix. part i. pp. 787 *et seq.*

the "compromise" tariff bill became the law of the land on the same day. That they were companion acts was known to all; that they were "connected" was asserted by Calhoun, but was admitted by none of the supporters of the measure aimed at nullification. The bills were virtually both administration measures, — the one championed chiefly by Mr. Webster, the other devised by Mr. Clay, the two most prominent opponents of the administration in the Senate. The one dealt firmly with the State, which was on the verge of rebellion; the other promised compliance with the demands of that State on a day certain. No doubt there was patriotism behind both measures, a wish to save the Union, a desire for the restoration of peace and good-will. Upon a fair and candid estimate of the public sentiment of the time it cannot be questioned that, whether patriotism did or did not require the sacrifice of protection implied in the compromise act, political sagacity did require it. The system would surely have been swept away within a year or two if some of its adherents had not foreseen what was to happen and taken security of the future. Under the act of 1833 the land had rest from tariff wars for several years, and freedom from agitation until the time approached when the "permanent system" was to become operative.

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